

FEASTER CHARTER SCHOOL:

Brown Act, Conflicts of Interest and Best Practices for
Charter Board Members and Officials

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YM&C



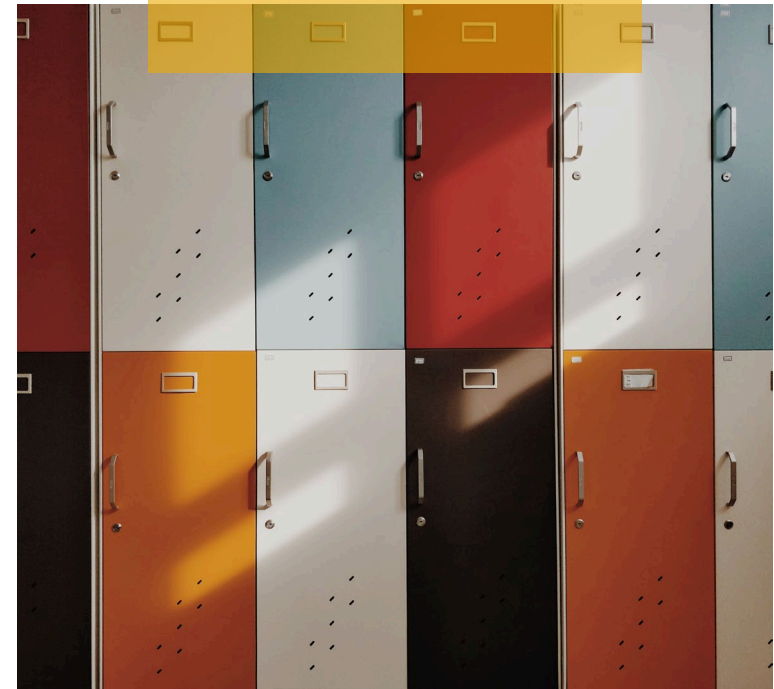
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TOPICS WE'LL COVER

- ✓ **Roles and Responsibilities of Board and Management**
- ✓ **Board Compliance**
 - Brown Act
 - Teleconferencing
 - Conflict of Interest
- ✓ **Board Duties and Best Practices**
 - Duty of Care (informed decision-making)
 - Duty of Financial Oversight
 - Duty of Loyalty (conflicts)





ROLES AND RESPONSIBILITIES OF BOARD AND MANAGEMENT

Know the Differences

ROLES AND RESPONSIBILITIES

Independent charter schools are run by nonprofit corporations.

- Board of Directors has legal and fiduciary responsibility for the charter school.

Feaster is a “*dependent*” charter school

- The Board is responsible for providing fiscal accountability by approving and monitoring the budget. (Similar to nonprofit corporation.)
- Directors nominated in accordance with bylaws and relevant board policies

BOARD AND MANAGEMENT

Board is responsible for long-term viability and success of the schools

- Board ensures long-term viability of organization
- Board approves the “Big Stuff”:
 - Major educational and operational policies
 - Annual budget
 - Reviews and monitors financial policies and procedures, budget, and finances to inform and evaluate resource allocation
 - Hires and evaluates Executive Director (along with District Superintendent)
 - Does not have direct responsibility for day-to-day operational matters

Executive Director

- In charge of day-to-day operations
- Selection of all other staff

DUTIES OF DIRECTORS (BOARD MEMBERS)

Directors owe duties to the school organization, even though it's not an independent nonprofit

- Duty of Care
- Duty to provide financial oversight
- Duty of loyalty

We'll discuss each one of these in just a bit.



BROWN ACT

We are Back to Pre-Pandemic Rules

BROWN ACT: HOLDING MEETINGS

Boards take action at meetings... so 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”
(Gov. Code sec. 54952.2)

- Avoid inadvertent serial meetings through email or text communications
- What if we have non-charter business? Do we need to comply with Brown Act for that, too?
 - No, if “unrelated to the operation of the charter school.” (SB126)

Brown Act “types” of meetings

- “Regular” meetings require 72 hours posting of notice
- “Special” meetings require 24 hours notice
- Teleconferencing
 - Notice in agenda
 - Identify teleconference location
 - Roll call vote
- What about an “emergency” situation?

HOLDING MEETINGS

Brown Act limits meeting to posted agenda:

- Brief general description of business to be transacted (20 words or less)
- Post in publicly accessible place at/near location
- Restrictions on adding items to agenda*

Must post agenda on website:

- Record how members vote

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

BOARD COMMITTEE MEETINGS

Brown Act applies to committees created by board, even if just advisory:

- Applies to “standing” board committees (e.g., finance committee, executive committee) with delegated power of board, and...
- Also applies to advisory committees, which may have parents and other community members who are not on board, and do not exercise board authority
- **“Ad hoc” committees exempt, and Executive Director advisory teams exempt**

SB 126 RULES REGARDING MEETING LOCATIONS AND MULTI-SITE TELECONFERENCING

- SB126 imposes additional rules as part of Ed. Code for charters only —not part of the Brown Act
- Board meeting location requirements vary depending on number of school sites and counties you operate in (Feaster falls into first column)

ENTITY WITH SINGLE CHARTER	ENTITY WITH MULTIPLE CHARTERS	
	SAME COUNTY	MULTIPLE COUNTIES
Meet within boundaries of county where authorized and located	Meet within boundaries of county where authorized and located	Meet in county where greatest number of pupils reside (might change over time)
Two-way teleconference from each site* if you have more than one	Two-way teleconference from each site*	Two-way teleconference from each site*
*Includes school sites and resource centers.		Audio/video record and post to website

SB126 teleconferencing rules do not apply to committees

HOLDING MEETINGS-CLOSED SESSIONS

Brown Act limits “closed” sessions:

- Limited (Not for budget discussions, general planning)
- Statutory basis must be identified in agenda, such as...
 - Litigation (identify matter)
 - Personnel evaluation, termination (identify position)
 - Real estate negotiations (identify property and negotiators)
- Stick to the closed session topic
 - Don't stray into topics that should be discussed in open session
 - No compensation votes in closed session

Rights of public:

- Speak before action taken on any item (including closed session)
- Publicly accessible location (with disabled access)
- Public comment can (and should) be time-limited
- At regular meeting to address board on something not on agenda
 - Non-agenda comment not required at special meetings, but you can allow if you want to



TELECONFERENCING RULES

AB 361 REPLACED EXECUTIVE ORDER

- Back in March 2020, in-person and teleconferencing rules under Brown Act were suspended by Executive Order—but that expired last year
- AB 361 provided new “emergency” teleconferencing rules, through February 2023

○ **Expired February 28, 2023**

- If board chooses to meet in person, then it may follow the pre-pandemic board teleconferencing rules

STANDARD AND “JUST CAUSE” TELECONFERENCING

New AB 2449 "Just Cause" or emergency teleconferencing options

- Complicated and cumbersome
- Can only use if you've posted meeting by Zoom for public participation
 - Physical or medical emergency
 - Childcare or caregiver issue
 - Contagious illness
- Board votes on whether there is just cause
- Limit on number of times you can do it (20% or two meetings, generally)
- A quorum must be physically present at same meeting location

Standard teleconferencing

- Post location on agenda
- Publicly accessible location
- Quorum must be present in San Diego County
- Roll call vote



CONFLICTS OF INTEREST

Disclosure and Avoidance

CHARTER OFFICIALS SUBJECT TO POLITICAL REFORM ACT

SB 126 requires charters to adopt conflict of interest “code”

- Requires annual financial disclosures by designated officials (the “Form 700”)
 - Spouse’s interests count
- Requires disclosure, disqualification from any decision that may affect material financial interests

GOV. CODE SECTION 1090

- SB 126 applies GC 1090 to charter school officials
 - Many charter petitions and MOUs already require compliance
 - Explicit carve-out for conflicts created by employment relationship (OK for employees to be board members)
- Strict rule to “void” conflicted 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
 - Disclosure and recusal not enough -- if a board member has a significant financial interest in a business, it typically can't contract with Feaster under most circumstances
 - But look closely at the exceptions
- Probably uncommon for Feaster Board



DUTY OF CARE

Informed Decision Making

DUTY OF CARE

- The Board makes policy.
- The Executive Director is accountable for implementing all Board policies.
- The Charter and/or policies further delineate roles and responsibilities, including delegated authority.
- Board members should not get involved with day-to-day business operations of the school

DUTY OF CARE

- Be informed, stay informed and be proactive
- Ask questions to seek clarity before voting
- Listen to all perspectives and test your understanding of information and implications
- “Own your decision”

BOARD MEMBER EXPOSURE TO PERSONAL LIABILITY

- There is broad nonprofit law and government agency immunity for volunteer board members that would apply to Feaster
- D&O insurance to defend claims against board members acting within scope of duties

BOARD MEMBERS CAN BE PERSONALLY LIABLE WHEN:

- Acting outside course and scope of duties (such as supervising/disciplining rank-and-file employees, rather than policy-making)
- Breaching fiduciary duties
- Conflicts of interest that create personal benefit
- Intentional or willful misconduct



DUTY OF FINANCIAL OVERSIGHT

CHARTER SCHOOL FINANCES

- Annual budget is blueprint for school year, setting spending priorities and goals
 - Board approves and monitors annual budget and finances
 - Financial reports are presented to the Board, such as balance sheet, income statement, cash flow

DUTY OF FINANCIAL OVERSIGHT

Board Must Ensure Adherence to Fiscal Policies and Sound Financial Management

- Lots of talk about charter (mis)management of finances
 - Emphasizes how important this topic is
- CVESD may seek background information about board members to help ensure you have sufficient “capacity” to manage finances of the schools
- Scrutiny of and adherence to sound financial policies is the norm

DUTY OF FINANCIAL OVERSIGHT

- Potential for charter revocation due to failure to meet GAAP, or “fiscal mismanagement.”
 - Ed. Code, § 47607(c)(1)(C)
- Chartering authority to assess and monitor fiscal condition of charter school.
 - Ed. Code, §§ 47604.32(d) & 47604.33(b)
- Periodic financial reports are required.
 - Ed. Code, § 47604.33(a)
- Annual, independent financial audits are required
 - Ed. Code, § 47605(m)

CHARTER SCHOOL FINANCES-AUDITS

- Required annually.
- It validates the schools' reported finances.
- Audits are also used to validate the charter school's internal controls.
- Board must approve Audit Agreement in Spring of each year.
- Board must approve the audit prior to submittal to oversight agencies.



DUTY OF LOYALTY

Conflicts

General Rule:

- Individuals in a position of public trust must avoid conflicts of interest which prevent them from fulfilling their duties in an impartial manner.
- Legal presumption is that a person with a conflict of interest can never be impartial

DUTY OF LOYALTY—AVOID CONFLICTS OF INTEREST

Directors' duty of loyalty

- Conflicts of interest must avoided, how?
 - Disclosure of personal financial interests
 - Financially “interested” directors can’t be board majority
 - Avoid self-dealing and financial interests in contracts

NONPROFIT DIRECTORS' "SELF-DEALING" TRANSACTIONS

For most charitable nonprofits (and by analogy to Feaster):

- Majority of Board must affirm “fairness” of self-dealing transaction
- Is it “material” to business of corporation?
- Financially interested board member must disclose and disqualify

... **but wait**, there's more! Remember our discussion earlier about Conflict of Interest Codes, Form 700s, and Government Code Section 1090!



QUESTIONS?

THANK YOU

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