CCAP Member Legislative Update Dated October 14, 2019

Changes to California Law Regarding Charter Schools: Impact on School Districts, County Offices of Education and Boards of Education as Charter School Authorizers

The 2019 legislative session has seen the most extensive change to the Charter Schools Act of 1992 since its original passage. The majority of the changes are contained in four bills—Senate Bill (SB) 126 (Chapter 3/2019), Assembly Bill (AB) 1505 (Chapter 486/2019), AB 1507 (Chapter 487/2019), and SB 75 (Chapter 51/2019). This California Charter Authorizing Professionals (CCAP) Member Legislative Update focuses on the first of these bills—SB 126.

CCAP will provide guidance over the next several weeks tailored to meet the needs of school district and county office authorizing professionals, superintendents, and board members. Our guidance will help inform each part of the charter lifecycle; charter petition review—approval and denial; oversight of existing charters; and the renewal/non-renewal decision. CCAP will also provide additional support through workshops and online trainings. CCAP will notify all CCAP members as soon as these events are scheduled.

The First Major Change – SB 126 - Charter School Transparency

AB 1505 and AB 1507 were signed by Governor Gavin Newsom on October 4, 2019, following his approval of SB 126 on March 5, 2019.

Ending a long multi-year battle, Governor Newsom's signature signifies greater transparency and public accountability for charter schools and charter school organizations by imposing conflict of interest requirements and adherence to the Brown Act rules that already apply to other public schools.

SB 126: Effective January 1, 2020, places on charter schools and entities managing charter schools[1],otherwise called Charter Management Organizations (CMO), the same transparency and conflict of interest requirements that school districts and other California public entities must follow. The bill addresses the Brown Act, the California Public Records Act, the Political Reform Act of 1974, and Government Code Section (GC §) 1090, discussed in detail below.

[1]Per Education Code Section (EC §) 47604.1(a), the phrase "entity managing a charter school" is defined as a nonprofit public benefit corporation that operates a charter school consistent with EC § 47604. There may be a need for clarification as to the definition of "operates".

Brown Act Compliance: For charter school authorizers, the application of the Brown Act (found in GC §54950 et seq.) to charter schools will make charter school oversight work easier as charter schools will be subject to the same process and procedures, rules and requirements for public meetings.

SB 126 requires that the charter school governance process be a public process adhering to the requirements of the Brown Act[2], including compliant board agendas, timely notice of meetings, rules governing closed sessions, and that the public at large have the same access to the open governance process for charter schools as they have with school district and county boards of education. However, the bill does include charter specific provisions because charter schools are not necessarily geographically bound in the same way as school districts and counties. These additional requirements are intended to ensure access to the governing board meetings by the school community(ies) and are required beginning January 1, 2020:

1. The governing board of a single charter school is required to meet within the county in which the charter school is located. For any meeting, a two-way teleconference must be in place at each school site thereby connecting the sites to the board meeting. (A single charter may have more than one school site, and a charter school governing board of a single site charter school may meet at a location other than the school site.)

2. The governing board of one nonclassroom-based charter school that does not have a facility or operates one or more resource centers is required to meet within the physical boundaries of the county in which the greatest number of pupils who are enrolled in that charter school reside.[3] For any meeting, a two-way teleconference needs to be in place at each school site and each resource center, connecting the sites to the board meeting.

3. For a governing board of an entity managing one or more charter schools located within the same county, the governing board of the entity managing a charter school is required to meet within the physical boundaries of the county in which that charter school or schools are located. For any meeting, a two-way teleconference must be in place at each school site and each resource center, connecting the sites to the board meeting.

4. For a governing board of an entity that manages two or more charter schools that are not located in the same county, the governing board of the entity managing the charter schools shall meet within the physical boundaries of the county in which the greatest number of pupils who are enrolled in those charter schools and managed by that entity reside.[4]

   A governing board that manages two or more charter schools that are not located in the same county must also audio or video record all governing board meetings and post the recordings on each charter schools' website.

[2] For the very limited situations where an entity operating a charter school may be operated by an entity governed by the Bagley-Keene Open meeting law, that law will apply. Bagley-Keen applies to statewide entities such as the State Board of Education.
[3] There will need to be a determination of what enrollment count will be used for this purpose.
[4] Ibid

Charter schools, similar to school district and county boards of education, will have the same Brown Act exceptions that are in GC § 54954 relating to a board meeting outside of the boundaries that are discussed above.

With the exceptions noted above, there is a wealth of materials regarding the general Brown Act and compliance that are already available to charter authorizing professionals and there may be significant expertise available regarding Brown Act compliance at your local school district and/or county office.

California Public Records Act: The purpose of the California Public Records Act (GC § 6250 et seq.) is to provide the public the ability to monitor the functioning of their local and state government. For charter school authorizers, it ensures that as a charter authorizer you will have access to the information needed to fulfill your oversight responsibilities.

This is particularly important regarding fiscal information that is needed to evaluate the financial viability of the charter school and the CMO as well as to safeguard against self-serving actions and/or conflicts of interest. SB 126 does include charter specific provisions if the charter school is located on a federally recognized California Indian reservation, Rancheria, or is operated by a federally recognized California Indian tribe. As there are only a small number of charter schools that meet these criteria, this exception should impact very few authorizers.

The Political Reform Act of 1974: The purpose of the Political Reform Act (GC § 81000) is to ensure that public officials act in a fair and unbiased manner in the governmental decision-making process and to promote transparency in government. It requires charter school and/or CMO board members to identify their assets (with limitations) and adopt a conflict-of-interest code. The verification of the adoption of a conflict-of-interest code by the charter school/CMO will be a reasonable oversight expectation. As with the other provisions of SB 126, charter authorizers are familiar with the Political Reform Act because they also must adhere to it.

Government Code 1090 – Conflict of Interest: GC § 1090 prohibits public officials (charter school and/or CMO board members) from being financially interested "in any contract made by them in their official capacity, or by any body or board to which they are members". The bill includes language that allows charter school employees to also serve as governing board members. Based on amended language contained in EC § 47604.1(d),

> "…an employee of a charter school shall not be disqualified from serving as a member of the governing body of the charter school because of that employee's employment status. A member of the governing body of a charter school who is also an employee of the charter school shall abstain from voting on or influencing or attempting to influence another member of the governing body regarding, all matters uniquely affecting that member's employment."

A violation of this provision can be a criminal offense. As with the other provisions of SB 126, charter authorizers in general are familiar with GC § 1090 because they also must adhere to it.

Limitations on the Applicability of the Brown Act, the California Public Records Act, the Political Reform Act of 1974, and GC § 1090: SB 126 also contains two limitations relating to unrelated activities and Entities Managing a Charter School.

1. Unrelated Activities: Nonprofit organizations in California operate under the provisions of the California Corporations Code. It is a special circumstance as defined by SB 126 that charter schools are subject to provisions that apply to public entities. However, SB 126 includes language that limits the application of these provisions to activities relating to the charter school(s). Furthermore, SB 126 prohibits the discussion during a charter board meeting of items unrelated to the operation of the charter school. Specifically, the bill states that "…the charter school shall not include the discussion of any item regarding an activity of the governing body that is unrelated to the operation of the charter school."

   From the perspective of a charter authorizer, this would mean that a non-profit would be required to conduct any non-charter school activities in separate, non-charter board meetings.

2. Limitations on the Definition of Entities Managing a Charter School: SB 126 clarifies that an entity that provides goods and task related services at the direction of the governing body of the charter school and the governing body retains the final decision-making authority is not an entity managing a charter school as defined by EC § 47604. This language is intended to clarify that these entities are not subject to the governance and transparency laws that the bill places on charter schools and CMOs.

Specific charter authorizer takeaways:

1. The bill takes effect on January 1, 2020. Charter schools must be in compliance by that date.

2. CCAP is working collaboratively with our members on specific "best practice" oversight practices and materials that will assist authorizers in meeting these new requirements. First priority for the distribution of these materials will be to CCAP members.

3. Each charter authorizer should define specific compliance requirements with written documentation for charter schools under its authorization.

Governance and conflict of interest laws are complex. The implementation process and application of changes under SB 126 will vary based on individual circumstances. CCAP will continue to track potential trailer bill legislation related to the implementation of SB 126 and will provide additional information as it becomes available. CCAP recommends school districts and county offices of education consult legal counsel as needed.

For more information about CCAP services and membership, please call our office at 916-244-3520 or visit our website at www.calauthorizers.org.