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      a. Select NAPCS Law ***(Page 107 – Page 114)***
      b. Written Charter Defined NRS/NAC ***(Page 115 – Page 116)***
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   3) Authority status and regulatory power

a. n/a

4) Equitable access to capital and facilities

a. n/a

5) Special education burden of proof

a. Relevant Statute ***(Page 141)***

6) Educational Management Organization (EMO) definition

a. Statutory definition of an EMO ***(Page 142)***

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Items suggested by stakeholder that are not recommended to pursue at this time

1) Annual Performance Audit exemption up to 5 yrs from 3 yrs

a. Page 146

2) Directory Language – incorporate FERPA language into NRS

a. Page 146

3) Teacher Flexibility

a. n/a

4) Charter schools and legislative intent

a. n/a

5) Charter school administrators

a. n/a

6. Discussion and possible recommendations for future action related to items discussed during the Annual Retreat. (Kathleen Conaboy, Chair) *(Agenda Item 7)* ***(Page 147)***

7. Discussion and possible action to authorize Authority staff to solicit proposals from contractors to facilitate and lead the collaborative development of a strategic plan and mission statement. (Steve Canavero, Director) *(Agenda Item 8)* ***(Page 148 – Page 151)***

8. Discussion and possible action identifying future agenda items (Kathleen Conaboy, Chair) *(Agenda Item 9)* ***(Page 152)***

STATE PUBLIC CHARTER SCHOOL AUTHORITY

SUPPORTING DOCUMENT

S U B J E C T: Retreat Opening Comments

/ /	Public Workshop
/ /	Public Hearing
/ /	Consent Agenda
/ /	Regulation Adoption
/ /	Approval
/ /	Appointments
/ x/	Information
/ /	Action

MEETING DATE: May 3, 2012
AGENDA ITEM: 2
NUMBER OF ENCLOSURE(S):

PRESENTER(S): Director Canavero

RECOMMENDATION:

FISCAL IMPACT:

BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):

LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES): 5 mins

BACKGROUND:

SUBMITTED BY: _____

STATE PUBLIC CHARTER SCHOOL AUTHORITY

SUPPORTING DOCUMENT

S U B J E C T: Open Meeting Law for Public Bodies

/ /	Public Workshop
/ /	Public Hearing
/ /	Consent Agenda
/ /	Regulation Adoption
/ /	Approval
/ /	Appointments
/ x/	Information
/ /	Action

MEETING DATE: March 23, 2012

AGENDA ITEM: 3

NUMBER OF ENCLOSURE(S):

PRESENTER(S): George Taylor, Senior Deputy Attorney General

RECOMMENDATION:

FISCAL IMPACT:

BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):

LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES):

BACKGROUND: All public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. NRS 241.010.

SUBMITTED BY: _____

STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

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OPEN MEETING LAW
2011 LEGISLATIVE CHANGES

These changes to the OML become effective on July 1, 2011. (Section 1.5 of AB 59 does not become effective until January 1, 2012.) There were two bills amending the OML—AB59 and AB 257.

The link to AB 59 as enrolled and signed by the Governor is:

http://www.leg.state.nv.us/Session/76th2011/Bills/AB/AB59_EN.pdf

The link to AB 257 is:

http://www.leg.state.nv.us/Session/76th2011/Bills/AB/AB257_EN.pdf

SUMMARY OF LEGISLATIVE CHANGES IN AB 59

1. **Quasi judicial meetings of a public body become subject to the OML**
2. **Public body must agendize an AG opinion finding it violated the OML.**
3. **Enactment of Investigative subpoena authority**
4. **The definition of "public body" has been clarified and its scope expanded.**
5. **Important agenda notice requirements have been made mandatory.**
6. **Notice requirement of NRS 241.033 not applicable to an applicant for employment.**
7. **Enactment of authority to seek a monetary penalty up to $500.00 against member(s) of public body.**

LEGISLATIVE CHANGES IN AB 257

1. **The OML now requires multiple periods of public comment.**

EXPLANATION OF LEGISLATIVE CHANGES IN AB 59

1. Quasi judicial meetings of a public body become subject to the OML.

[Note: section 1.5 is not effective till January 1, 2012]

Section 1.5 of AB 59 exempts only one public body from this requirement. The State Board of Parole Commissioners is exempt, but only when it acts to grant, deny, continue, or revoke parole of a prisoner.

"Quasi-judicial proceedings are those proceedings having a judicial character that are performed by administrative agencies." *Stockmeier v. N.D.O.C. Psychological Review Panel*, 122 Nev. 385, 390 (2006).

What follows is a brief discussion of the due process characteristics of a quasi-judicial proceeding.

The *Stockmeier* Court determined that quasi-judicial proceedings were "sufficiently akin" to a judicial proceeding to render it exempt under the OML. See NRS 241.030(4)(a).

The Court expanded its discussion of what determines whether a hearing is quasi-judicial. It said: "This court has held that an administrative body acts in a quasi-judicial manner when it refers to a proceeding as a trial, takes evidence, weighs evidence, and makes findings of fact and conclusions of law (citation omitted). We have also held that "the taking of evidence only upon oath or affirmation, the calling and examining of witnesses on any relevant matter, impeachment of any witness, and the opportunity to rebut evidence presented against the employee" was "consistent with quasi-judicial administrative proceedings." *Knox v. Dick,* 99 Nev. 514, 518, 665 P.2d 267, 270 (1983).

Public bodies acting in a quasi-judicial capacity will be subject to the OML on January 1, 2012.

2. Requirement that Public body agendize an AG opinion finding it violated the OML

This amendment was the result of the Attorney General's Task Force determination that the public has not always been informed about opinions from this office which found a violation by the public body.

Section 2 of AB 59 requires that the public body must include an item on its next meeting agenda following receipt of the opinion. This requirement is merely to acknowledge a finding by the Attorney General that the public body has taken an action in violation of the OML. The opinion of the Attorney General must be included in supporting materials for that agenda item. The item may be an informational item as there is no statutory requirement that any action be taken. The underlying reason for this change is to provide notice to the public of the Attorney General's opinion and to provide a forum for discussion between the public and the public body.

This section also provides that such acknowledgment is not an admission of wrongdoing on the part of the public body for the purposes of a civil action, criminal prosecution, or injunctive relief. This promotes transparency and accountability in government by ensuring the public is made aware of the finding of a violation.

3. Enactment of Investigative subpoena authority.

Section 3 of the Bill authorizes the Attorney General to issue an administrative subpoena for the production of documents, records or materials in the course of an investigation of an OML complaint. Failure or refusal to comply with an administrative subpoena issued pursuant to this section a misdemeanor.

Records, relevant documents, or other materials now subject to discovery may include emails among members of a public body; records of their phone calls; and other electronic communications made by a member of a public body while engaged in the public body's public business.

It is important to remind members of your public body of the OML's prohibition against "walking quorums," or constructive quorums, that can be created through conversations with other members or through electronic communication shared among a quorum of a public body. Subpoena of relevant records may reveal emails or phone calls among members which could have to be explained or justified to avoid a violation of the OML.

4. The definition of "public body" has been clarified and its scope expanded.

Section 4 of AB 59 revises the definition of "public body" in NRS 241.015(3) based upon how the body was created rather than based on its function. This definition also ensures that the actions and deliberations of certain multimember groups appointed by the Governor or a public officer under his direction is subject to the OML, as long as at least two members of the appointed body are not employees of the Executive Department of State Government. The Legislature deemed this expansion of the scope of the OML appropriate given the growing role such groups play in formulation of public policy.

5. Important agenda notice requirements have been made mandatory.

Section 5 of the Bill amends NRS 241.020 to require certain notifications on every agenda, including important information for the public describing how items on the agenda may be considered and what constitutes reasonable time, place, and manner restrictions on public comment.

The purpose of these mandatory requirements is to inform the public about how the public meeting will be conducted, what they may expect and how public comment will be conducted.

NRS 241.020 will require:

(a) Placing of the phrase "for possible action" next to the appropriate item.

(b) Notification to the public that:
- Items may be taken out of order;
- Items may be combined for consideration by the public body; and
- Items may be pulled or removed from the agenda at any time.

Notice to the public of reasonable restrictions on time, place, and manner of public comment and notice that comment based on viewpoint may not be restricted.

6. Notice requirement of NRS 241.033 not applicable to an applicant for employment.

Section 6 of AB 59 eliminates any notice requirement to applicants for employment which must be considered by a public body.

NRS 241.033 requires personal notice or 21 day mail notice to any person whose professional competence, alleged misconduct, character or physical or mental health will be discussed in a public meeting. This amendment removes the notice requirement of NRS 241.033 from persons who apply for employment and who will be considered or discussed by a public body.

7. Enactment of authority to seek a monetary penalty up to $500.00 against member(s) of public body.

Finally, Section 7 of the Bill amends NRS 241.040 to authorize the Attorney General to seek a civil penalty not to exceed $500 for any violation of the OML. A civil penalty is applicable only when a **member** of a public body who attends a meeting of that public body where action is taken in violation of any provision of the OML **participates in such action with knowledge of the violation.** Enforcement of this penalty against a member of a public body based on "participation" may only occur when the member makes a commitment, promise, or casts an affirmative vote to take action on a matter under the public body's jurisdiction or control when the member knew his/her commitment, promise, or vote was taken in violation of the OML.

A public body must take action in order for the civil penalty to be potentially applicable. "Action" is defined in NRS 241.015(1) as an affirmative act; the Attorney General will not interpret it to include mere silence or inaction by members. This office would not seek to punish individual members who attempt to comply with the OML, only those that actually violate it.

EXPLANATION OF LEGISLATIVE CHANGES IN AB 257

1. The OML now requires multiple periods of public comment.

Section 1 amends NRS 241.020 to require that public bodies adopt one of two alternative public comment agenda plans.

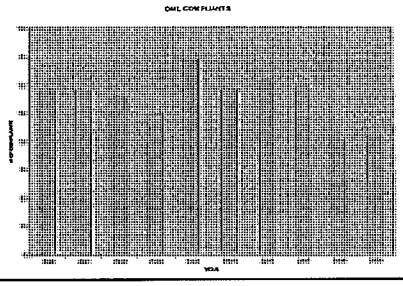
First, a public body may comply with the new requirement by agendizing one public comment period before any action items are heard by the public body and then hear another period of public comment before adjournment.

The second alternative also involves multiple periods of public comment after discussion of each agenda action item, but before the public body takes action on the item.

Finally, regardless of which alternative is selected, the public body must allow the public time to comment on any matter not specifically included on the agenda as an action item some time before adjournment.

2012 OPEN MEETING LAW and Legislative Amendments

Complaints for Years: 2000 -2009



Legislative Declaration Of Intent

All public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. NRS 241.010.

2011 Legislative OML Acts AB 59 and AB 257

- Handout:
- Seven major amendments to the OML from AB 59;
- One very big change to public comment from AB 257.
- All these changes are discussed going forward and appear in this .ppt in future slides

AB 257: Public comment Amendment

- There's now a choice for public bodies:
  1. Two p.c. periods, One before any action item has been considered, and another period of p.c. before adjournment.
  2. Or. P.c. must be heard before a public body takes action on any action item but after it has discussed the matter. And the public body must allow one more period of p.c. before adjournment.

Word Play:

"Deliberation" Or "Discussion"
Why does it matter?

AB 257 amended Public comment requirements;

- So what does "discuss" mean when AB 257 states that public comment must come after the public body "discusses" the action item but before it takes action?
- Do we consult the dictionaries?
- Nevada Supreme Ct.: "...it is the collective **discussion** of an issue with the goal of reaching a decision" that constitutes **"deliberation."**

AB 59; important new agenda notice requirements

Section 5, AB 59: Public body must state on agenda that:

- Action items must be "for possible action,"
- items may be taken out of order: and/or
- Items may be combined removed at any time.
- Most importantly: public comment restrictions must appear on the agenda.

AB 59, an exception to notice requirement in NRS 241.033

A public body need not notice an applicant for employment. This exception only applies when and where the public body is the appointing authority and the employee will serve at the pleasure of the public body.

OPENNESS IS THE NORM, NOT THE EXCEPTION;

The OML is:

"...for the public benefit and should be liberally construed and broadly interpreted to promote openness in government."

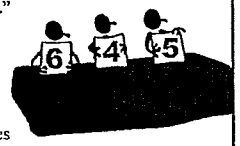
Dewey v. Redevelopment Agency of City of Reno, 119 Nev. 87, 94 (2003)

...But, the *Dewey Court also said:*

- OML does not prohibit every private discussion of a public issue by members of public body or even forbid lobbying for votes, but;
- ...a quorum must not be involved.
- see: *McKay v. Bd of County Commissioners, (103 Nev. 490 (1987)) members of public bodies may discuss matters with colleagues, but the "OML only prohibits collective deliberations or actions where a quorum is present."*

Critical Definitions to understand the OML and public meetings.

- Deliberations are defined in the manual at section 5.01: "to examine, weigh and reflect upon the reasons for or against a choice [before the public body] i.e. "collective discussion, acquisition and exchange of facts preliminary to decision."



- Action, or voting or decision:
  See Manual section 5.01
  - includes promise or commitment;
  - But no secret ballots or secret promises
  - Action occurs when a vote is taken by a majority of the members present during a meeting of a public body

AG's Open Meeting Law Manual

(new edition to be published March 2012)

- Statutory provisions
- Explanation of requirements
- Examples
- Compliance checklists
- Forms
- Available on our website at www.ag.state.nv.us or through your legal Counsel

Remedies if Violation occurs

- Void action; and/or seek injunctive relief;
- Corrective Action: AG's OML Manual, section 11.
- Private Lawsuits: NRS 241.037(2)
- Criminal Misdemeanor: NRS 241.040
- Civil monetary fines (NRS 241.0395)
- All of these remedies are now supported by subpoena authority!! (NRS 241.039).

Subpoena Authority: NRS 241.039

- AG may issue subpoenas for the production of "relevant documents, records or materials" in any OML investigation...
- Willful failure to comply may result in prosecution for misdemeanor.

PENALTY For OML Violation

- AB 59 section 7, **Final requirements:** (AB 59 as enrolled)
  - Violator must have knowledge of violation ...,
  - He/she must have participated in action which violated the OML.
  - Fine: up to $500.00
  - 1 year limitations period for bringing an action.
  - This cause of action belongs solely to the Attorney General.

How to avoid Violation

- Enforcement against a member of a public body based on "participation" may only occur when the member makes a commitment, promise, or casts an affirmative vote to take action on a matter under the public body's jurisdiction or control when the member knew his/her commitment, promise, or vote was taken in violation of the OML.

More about how to avoid violation

- The civil penalty amendment requires that a public body take action in order for the civil penalty to be potentially applicable. "Action" is defined in NRS 241.015(1) as an affirmative act; mere silence or inaction by members is not sufficient to rise to the level requiring enforcement.
- This office would not seek to punish individual members who attempt to comply with the OML, only those that actually violate it.

...Yes, AB 59 CHANGED THE DEFINITION OF PUBLIC BODY

- Manner of creation – not function;
- Blue Ribbon Commissions?
- What is an entity subject to the OML?
- No intention to ensnare staff;

What Is A Public Body? Does the Open Meeting Law Apply?

- It must still be collegial!! (from the Manual)
- "public body" must still be an administrative, legislative, advisory, or executive **body** of the state or local government. (from the statute)
- *And,* the public body must expend or disburse tax revenue, or it:
- Advises or makes recommendations to a public body that is supported by tax revenue.
- AB 59 did not tamper with these requirements...

This is how the definition changed. It's a public body ...if

- **... the administrative, advisory, executive, or legislative body is created by:.**
- **(1) The Constitution of this State;**
- **(2) Any statute of this State;**
- **(3) A city charter and any city ordinance which has been filed or recorded as required by the applicable law;**
- **(4) The Nevada Administrative Code;**
- **(5) A resolution or other formal designation by such a body created by a statute of this State or an ordinance of a local government;**
- **(6) An executive order issued by the Governor; or**
- **(7) A resolution or an action by the governing body of a political subdivision of this State;**

Governor appointed Blue Ribbon Commissions are now public bodies

- **Any board, commission or committee consisting of at least two persons appointed by:**
- **(1) The Governor or a public officer who is under the direction of the Governor, if the board, commission or committee has at least two members who are not employees of the Executive Department of the State Government;**
- **(2) An entity in the Executive Department of the State Government consisting of members appointed by the Governor, or**
- **(3) A public officer who is under the direction of an agency or other entity in the Executive Department of the State Government**

NRS 241.0395

(AB 59 section 2)
New important administrative requirement

public body must publish Attorney General's opinion which found violation the OML on its next agenda.

- Findings of Fact and conclusions of law;
- Next agenda item to acknowledge the opinion.;
- AG's opinion must be included in supporting material;
- Discussion agenda item is not an admission of wrongdoing for purpose of civil or criminal action.

Public Body Meetings
Nevada: Quorum State

- There still must be quorum of the members of a public body present at a meeting for OML to apply!
- Quorum: a simple majority of the members of the public body or another proportion established by law.

Meeting Basics: two components

- **Deliberations,** "to examine, weigh and reflect upon the reasons for or against a choice [before the public body] i.e. "collective discussion, acquisition and exchange of facts preliminary to decision."
- **Action,** or voting or decision:
- includes promise or commitment;
  - But no secret ballots or secret promises
  - Action occurs when a vote is taken by a majority of the members present during a meeting of a public body

Committees are Still public bodies, despite new definition

- Public Body still includes committees and subcommittees. NRS 241.015(3). Committee's legal status depends on parent body's legal status.
- Agency staff? Not usually subject to OML
- Non-profit corp? No, See OMLO 2001-17
- Members elect of public bodies? Yes
- Specific examples: See OML manual sec.3.07

What is a Meeting? Quorum? Why is this important?

- Meeting: The gathering of members of a public body at which a **quorum** is present to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power. NRS 241.015(2)

More about Quorum

- NRS 241.015(4): Quorum means a simple majority of the "constituent membership" or a public body or another proportion established by law.
- "Constituent" (dictionary definition) means: one who has been given authority to act for another, but vacant positions cannot act, only members can act.
- Quorum: What about elected bodies?

Public Meeting Basic rules

Stick to the Agenda: Members and/or counsel must prevent public body from wandering to related topics;

Minutes must be kept and at minimum must reflect:

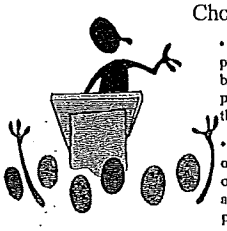
- date, time and place of meeting;
- members who were present and members who were absent;
- substance of all matters proposed, discussed or decided;
- substance of remarks made by any member of the general public who addresses the body if he requests that the minutes reflect his remarks or a copy of prepared written remarks.

Public Meeting Basic Rule "Clear and Complete" rule

NRS 241.020(2)(c)(1)

- Cornerstone of OML
- Nevada S.Ct.: *Sandoval v. Bd. Of Regents, 119 Nev. 148 (2003);*
- *Rejected the so-called "germane" standard.*
- *Agenda topics must be specific to alert the public to topics that will be discussed.*

Meeting Basics under the new AB 59 and 257 requirements



Public Comment: Now there's a Choice! AB 257

- Either two periods of public comment; ... Or public comment during every action item ,but before action by the public body plus one period of general public comment. [more on this later]
- Reasonable rules and regulations that ensure orderly conduct of a public meeting and ensure orderly behavior on the part of those persons attending the meeting must be adopted by a public body and appear on the agenda.

OML Exceptions to open meeting

Public body may hold **closed meeting** to:

(a) Consider the **character, alleged misconduct, professional competence, or physical or mental health of a person.**

(b) Prepare, revise, administer or grade examinations that are conducted by or on behalf of the public body.

(c) Consider an appeal by a person of the results of an examination that was conducted by or on behalf of the public body, except that any action on the appeal must be taken in an open meeting and the identity of the appellant must remain confidential.

Other OML Statutory Exemptions

Statutory Exemptions: Manual sec.4.02

- Judicial proceedings except quasi-judicial proceedings: AB 59 sec.1.5
- Legislature;
- Ethics Commission;
- Labor negotiations: NRS 288
- School board expulsion hearings;
- And many others.

OML exemptions v. exceptions

Section 4.01 of the OML Manual illustrates distinction between "exemption" and "exception";

Exemption applies to all entity's proceedings;

Exception applies only to certain entity proceedings, not all of them.

AB 59 overturned Nv. S.Ct. Recently created OML Exemption for "Quasi-judicial" Proceedings:

Witherow v. State, Bd of Parole Commissioners, 123 Nev 305 (2007)

- Nevada State Parole Board.
- quasi- judicial proceedings had been deemed sufficiently akin to judicial proceedings to render them exempt.
- What are elements of quasi-judicial?

Elements Of Quasi-judicial Proceeding

- Minimum requirements to qualify as quasi-judicial proceeding:
  1) evidentiary hearing;
  2) cross examination of witnesses;
  3) written decision by public body;
  4) right of appeal to higher authority.

1st Amendment: public comment Issues; Currently the OML authorizes a public body to:

- restrict public speakers to the subjects within its control and jurisdiction;
- limit public comment if the "speech becomes irrelevant or repetitious."
- apply reasonable time limitations,
- And limit caustic personal attacks.
- **But a public body may not limit public comment based disagreement with "viewpoint" of the speaker.**
- OMLO 2001-22; AG File No. 00-047

Additional public comment issues

- Does the OML require "meaningful" public comment? (Recent decision in 8th J.D)
- Any limitation should be clearly articulated on the public body's agenda;
- Identify public body practices which discourage public comment?
- Chairperson's **discretion** to allow more time or limit an individual's time.

What about definition of ... "Committee, sub-committee or other subsidiary thereof..." NRS 241.015(3)

Current Attorney General interpretation of NRS 241.015(3) mandate that the legal status of the parent body applies to it's "committee, subcommittee or any subsidiary thereof"

:

Committee or no committee:

- AG's Manual states: "...to the extent that a group is appointed by a public body and is given the task of making decisions for or recommendations to the public body, the group would be governed by the Open Meeting Law."

Are Serial Briefings a Meeting?

- No! In *Dewey* 119 Nev. At 94, 64 P. 3d at 1075, the Nevada Supreme Court stated that private briefings among staff of a public body and a non-quorum of members of a public body is not a meeting for purposes of the Open Meeting Law, and such a meeting is not prohibited by law. See §5.08 supra for a further discussion of Dewey.
- But stay away from "serial quorum" or "walking quorum" or "constructive quorum. All terms are synonymous.

Serial, Walking or Constructive Quorum

It's a Meeting if members participate in a series of gatherings of members of a public body at which:

- less that a quorum is present at any individual gathering
- the members of the public body attending one of more of the gatherings collectively constitute a quorum, and
- the series of gatherings was held with the specific intent to avoid the provisions of this chapter.

"Serial, walking or constructive" meeting caused by communications among members!!

Electronic Communications such as telephone, fax or email, may not be used to circumvent the spirit or letter of the Open Meeting Law in order to discuss or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory powers. *Del Papa v Board of Regents of the CCSN*, 114. Nev.388,400 (1998).

Appointment Process for an Appointed public officer, or one who serves at the pleasure of the public body

- NRS 241.031; and NRS 241.030(4)(e)
- A continuing source of confusion and controversy;
- 1989 S.Ct case: "all consideration, deliberation, discussion and selection" must be done in public.
- So, What does this mean?

Public Officer Appointment process

- The Nevada Supreme Court explicitly stated that the OML applies only to an appointment process conducted by a public body. NRS 241.031;
- **Public officer** is defined in NRS 281.005 to mean a person elected or appointed to a position which: (a) Is established by the Constitution or a statute of this State, or by a charter or ordinance of a political subdivision of this State; and (b) Involves the continuous exercise, as part of the regular and permanent administration of the government, of a public power, trust or duty."

Exception to Open Public Meeting: Closed Meeting

- Closed meeting under NRS 241 may only be held to consider:
  - Character, alleged misconduct, professional competence or physical or mental health of a person; or
  - Prepare, review, or grade examinations administered by the public body; or
  - Consider the appeal by a person of the results of an examination administered by the public body.

Notice Provisions prior to Closed Meeting

Notice to Individuals: NRS 241.033:

Written notice to persons must be:
- Delivered at least 5 working days prior to the closed meeting,
- Or sent certified mail at least 21 working days prior to the meeting to last known address of the individual, and it must include the time and place of the meeting.

Notice Provisions for Closed Meetings (cont'd)

Must include a list of general topics concerning the person to be discussed during the closed meeting, and it must

Include a statement of the rights of the individual to counsel during the meeting and the right to call witnesses and offer evidence relevant to the issues.

The notice may include an informational (NRS 241.033(2)(b), but it:

Notice to Individuals pursuant to NRS 241.034

A CLOSED MEETING MAY NOT BE HELD IF:

- A public body seeks:
  1. to discuss the appointment of any person to a public office or as a member of a public body;
  2. to consider the character, alleged misconduct, professional competence, or physical or mental health of an elected member of a public body;
  3. to conduct attorney-client communications, unless specifically authorized by statute; these meetings are now **non-meetings**. See NRS 241.015(2)(b)
  4. to discuss indebtedness

Closed Meeting: Appearance on the Agenda

Closed Meeting:

- A motion must be made to go into closed session and the motion must specify the business to be conducted during the closed session. Only the business identified in the motion may be discussed. **See Sample Form 3.**
- No action may be taken in closed session, including forming a consensus or recommendation. **Section 9.04, OML Manual**

AG's investigation procedure

...is based on NRS 241.037:

"Any suit brought against a public body ... to require compliance with the provisions of this chapter must be commenced within 120 days after the action objected to was taken by that public body in violation of this chapter. Any such suit brought to have an action declared void must be commenced within 60 days after the action objected to was taken."

AG Manual policy:

The Attorney General's policy for enforcement of Open Meeting Law complaints is:

- Pursuant to prosecutorial discretion, she may choose not to prosecute an Open Meeting matter prior to the running of the 120-day statute of limitations.
- The AG will not investigate or act upon a complaint alleging an Open Meeting Law violation received after the 120-day statute of limitations.
- The Attorney General will not issue an Open Meeting Law Opinion pursuant to its prosecutorial discretion after the 120-day statute of limitations has expired.
- A.G.'s Manual Section 11.07

Corrective Action: (Cure)

- Currently, the NRS does not provide a "safe harbor" to public bodies that take corrective action to cure a defect in their public meeting, but:
- The AG's manual encourages corrective action to avoid civil suit. Manual at section 11.
- Now there are additional penalties in chapter 241 including criminal prosecution.

Cure OML violations immediately!

- OMLO 2008-02
- Well, maybe not immediately, but quickly!
- Facts: quorum of public body met openly during a break;
- They were discussing a contentious master plan and agenda item;
- After break, one member publicly admitted to violation and described the nature of the conversation.

Cure OML violations immediately!

- This public body's admission coupled with description of conversation effectively "cured" the violation.
- Public body had taken no action following the recess in the meeting; no promises or commitments had been made.
- The audio of the meeting revealed that subsequently, there was vigorous discussion and an eventual impasse, but the OML violation had been cured.
- OML manual section 11.01 advises public bodies to "stop, contain, and correct violations" as soon as possible.

Cure OML violations immediately!

- Cure could be used more frequently;
- Counsel should pay close attention to proceedings during the open meeting;
- If necessary put the "cure" on the record; Clear up any issue about whether promises were made, and explicitly describe what was discussed.
- Encourage the public body quorum which may have violated OML to make statement regarding his or her participation.

QUESTIONS OR COMMENTS?

GEORGE H. TAYLOR
Senior Deputy Attorney General

- Telephone (775) 684-1230
- Fax (775) 684-1108
- 100 North Carson Street
  Carson City, Nevada 89701
- www.ag.nv.gov

STATE PUBLIC CHARTER SCHOOL AUTHORITY

SUPPORTING DOCUMENT

S U B J E C T: Charter School Association of Nevada presentation

/ /	Public Workshop
/ /	Public Hearing
/ /	Consent Agenda
/ /	Regulation Adoption
/ /	Approval
/ /	Appointments
/ x/	Information
/ /	Action

MEETING DATE: May 3, 2012

AGENDA ITEM: 4

NUMBER OF ENCLOSURE(S):

PRESENTER(S): Dr. John Hawk, President Charter School Association of Nevada

RECOMMENDATION:

FISCAL IMPACT:

BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):

LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES): 30 mins

BACKGROUND: http://www.nevadacharters.org/

SUBMITTED BY: _____

STATE PUBLIC CHARTER SCHOOL AUTHORITY

SUPPORTING DOCUMENT

S U B J E C T: Ethics in Government	
/ /	Public Workshop
/ /	Public Hearing
/ /	Consent Agenda
/ /	Regulation Adoption
/ /	Approval
/ /	Appointments
/ x/	Information
/ /	Action

MEETING DATE: May 3, 2012
AGENDA ITEM: 5
NUMBER OF ENCLOSURE(S):

PRESENTER(S): Caren Jenkins, Executive Director Nevada Commission on Ethics

RECOMMENDATION:

FISCAL IMPACT:

BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):

LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES): 120

BACKGROUND: The Nevada Commission on Ethics is a blended executive/legislative commission responsible for administering and enforcing Nevada's Ethics in Government Law found in NRS chapter 281A.

SUBMITTED BY: _____

Commission Hearings

Commission hearings are open to the public. Matters are heard by the six members who did not serve on the Panel. The Subject is entitled to be represented by legal counsel, hear and respond to the evidence presented to the Commission, and present evidence on his or her own behalf.

The Requester may submit written questions to the executive director, who determines whether the questions are relevant and appropriate. The Commission is not required to ask any question submitted by a Requester. Both the Commission and the Subject may subpoena and question witnesses.

Following a hearing, the Commission may make one of these determinations:

1. ***Willful violation.*** *A majority of the Commission finds, by a preponderance of the evidence, that the public officer or employee violated one or more provisions of NRS 281A, and that the conduct was knowing and intentional as those terms are defined in statute.*

2. ***Non-willful violation.*** *A majority of the Commission finds, by a preponderance of the evidence, that the public officer or employee violated one or more provision of NRS 281A, but that the conduct was not knowing and intentional as those terms are defined in statute.*

3. ***No ethics violation.***

Sanctions

Only if the Commission finds a willful violation may it impose a civil penalty up to:

$ 5,000 for the first willful violation
$10,000 for a second willful violation
$25,000 for a third or additional willful violation

Commission on Ethics

The Nevada Commission on Ethics is a blended executive/legislative commission responsible for administering and enforcing Nevada's Ethics in Government Law found in NRS chapter 281A.

The Ethics Commission consists of eight members appointed to serve 4-year terms - four are appointed by the Governor, and four are appointed by the Legislative Commission.

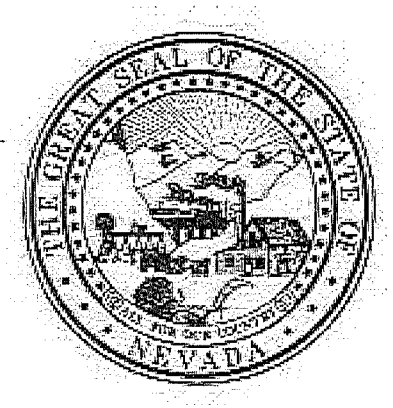
Not more than four members may be residents of the same county and no more than four members may be of the same political party.

No Commission member may hold another public office or be actively involved in the work of any political party or political campaign.

The state-wide staff to the Commission consists of an executive director and commission counsel selected by the Commission and a paralegal, investigator and executive assistant.

Nevada Commission on Ethics
704 W. Nye Lane, Suite #204
Carson City, NV 89703
Phone: 775-687-5469
Fax: 775-687-1279
Email: ncoe@ethics.nv.gov
Website: http://ethics.nv.gov

NEVADA COMMISSION ON ETHICS



CITIZEN'S GUIDE TO NEVADA'S ETHICS IN GOVERNMENT LAW

In Nevada, a public office is a public trust held for the sole benefit of the people.

Public officers and employees must commit to avoid conflicts of interest between their private interests and public duties.

Public Officer

A public officer is a person elected or appointed to a position established by the Nevada constitution, state statute, or county or city ordinance who exercises a public power, trust or duty. (See NRS 281A.160.)

Public Employee

A public employee is any person who performs duties under the direction and control of a public officer for compensation paid by the state or a county or city. (See NRS 281A.150)

Ethics in Government Law

The Nevada Ethics in Government Law is limited to Chapter 281A of the Nevada Revised Statutes. It consist of five sections:

General Provisions
NRS 281A.010 - 281A.185
Commission on Ethics
NRS 281A.200 - 281A.300
Code of Ethical Standards
NRS 281A.400 - 281A.480
Miscellaneous Provisions
NRS 218A.500 - 281A.550
Financial Disclosure Statement
NRS 281A.600 - 281A.660

Conflicts of Interest

A "conflict of interest" is the private or personal interest of a public officer or employee, or of someone close to a public officer or employee, that is sufficient to affect his or her independence of judgment or the objective exercise of public duty. (See NRS 281A.420.)

Disclosure

Public officers and employees must disclose conflicts of interest at the time a matter is being considered - often at the opening of an item on a public meeting agenda. (See NRS 281A.420.)

Ethical Standards

Public officers and employees must not violate the provisions of NRS 281A.400. Please review the statute for a full understanding of:

Improper gifts
Unwarranted privileges
Contracting with government
Private compensation for public duties
Private use of confidential information
Suppressing information to further pecuniary interests
Misuse of government resources
Improper influence over subordinates
Use of position for self-dealing

PLEASE NOTE: Ethics-related provisions may exist in Nevada law that do not fall within NRS Chapter 281A, and therefore are not within the jurisdiction of the Commission on Ethics.

Requests for the Opinion of the Commission (RFO)

Any person may file a request for opinion (RFO) with the Commission regarding a public officer's or public employee's conduct. The person filing the complaint is the "***requester***." The public officer or employee who is the subject of the request is the "***subject***." The request must be submitted on a form which is available from the Commission's office or on its website (http://ethics.nv.gov).

The requester must affirm the truth of the allegations and provide some evidence to support them. The subject is provided a copy of the RFO and has an opportunity to respond. The entire matter is kept confidential until after the panel proceedings are completed.

Investigation

The Executive Director and Commission staff investigate the RFO and recommend to a two-Commission member Investigatory Panel whether just and sufficient cause is present for the Commission to hear the matter.

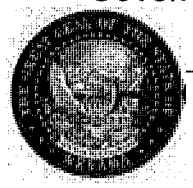
Panel Proceedings

A panel of two Commission members reviews the allegations, the investigation results and the Executive Director's recommendation and determines just and sufficient cause to proceed. Just and sufficient cause requires the presebce of some credible evidence to support a finding of an ethics violation.

If the Panel does not find some credible evidence to support the allegations, the matter is dismissed. However, if the Panel does find some credible evidence of a potential violation, the remaining Commissioners hold a public hearing.

The RFO, the Subject's response, Panel materials and Panel transcript are open for public inspection after the Investigatory Panel issues its determination.

Nevada Ethics in Government Law



Presented by:
CAREN JENKINS, ESQ.

Executive Director
Nevada Commission on Ethics

updated 2011 10 0

Nevada Commission on Ethics Vision & Mission Statement

VISION

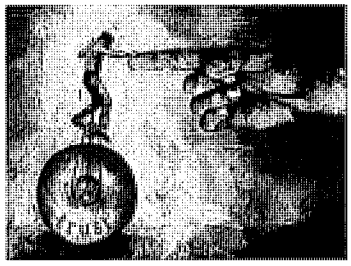
Principled public servants preserving the public trust.

MISSION

To enhance the public's faith and confidence in government by ensuring that public officers and public employees uphold the public trust by committing themselves to avoid conflicts between their private interests and their public duties.

updated 2011 10 0

Nevada Commission on Ethics



updated 2011 10 0

Nevada Commission on Ethics

- Interprets and provides guidance on the provisions of the Ethics in Government Law
- Investigates and adjudicates requests for opinion
- Accepts written disclosures required from certain public officers

updated 2011 10 0

But why do we need an Ethics Commission at all?

updated 2011 10 0

Because power corrupts, "[s]ociety's demands for moral authority and character increase as the importance of the position increases."

- John Adams, American Founding Father and second U.S. president (1735-1826)

updated 2011 10 0

Required Disclosures

Financial Disclosure Statement (FDS)

If you are 1) appointed to a position, 2) elected, or 3) appointed to an elective office, and are entitled to receive annual compensation of $6,000 or more, you must file an FDS annually WITH THE SECRETARY OF STATE on or before January 15th.

updated 2011 10 0

Required Disclosures for Board & Commission members

Acknowledgment of Statutory Ethical Standards (ACK)

Every public officer shall acknowledge that he has received, read and understands the statutory ethical standards at the beginning of his term and every even numbered year thereafter.

updated 2011 10 0

NRS 281A.500.1

Required Disclosures for Board & Commission members

Agency Representation Disclosure (ARD)

Any public officer who has represented or counseled a private person for compensa ion before a state agency of the Executive Branch shall make a disclosure of each such representation on a form prescribed by the Commission not later than January 15th of every year.

updated 2011 10 0

NRS 281A.410.3

Commission Practices-RESPONDS TO REQUESTS FOR ITS OPINION

- Advisory opinions about past, present, or future conduct of public officers/employees (confidential first-party requests)
- Ethics complaints from the public about conduct of public officers/employees (third-party requests)

updated 2011 100

Advisory Opinion

"It would be impossible to draft an ethics legislation that would cover every possible case, but [] the saving grace of this legislation is that the individual in a 'twilight' area can request an opinion before taking an action."

~ Senator Richard Bryan, Sponsor of the Nevada Legislative measure which allowed for first party opinion requests.

updated 2011 100

Citations for Ethics Complaints

Nevada's Ethics in Government Laws are found in Chapter 281A of Nevada Revised Statutes. (NRS 281A.010 through 281A.660)

updated 2011 100

Commission Jurisdiction

Public officer:

- ✓ Elected or appointed to position established by Constitution, state statute, charter or ordinance of any county, city or other political subdivision.
- ✓ Exercises public power, trust, or duty
  - Exercises administrative discretion or formulates policy;
  - Expends public money; **and**
  - Administers laws and rules of a state, county, city or other political subdivision.

updated 2011 10 0

NRS 281A.160

Commission Jurisdiction

- "State Legislator" or "Legislator" means a member of the Senate or Assembly of the State of Nevada.
- "Member of a local legislative body" means a member of a governing body of any political subdivision who introduces, votes upon or otherwise acts upon any matter of a permanent or general character which may reflect public policy and which is not typically restricted to identifiable persons or groups.

updated 2011 10 0

Exclusions:

Public officer does <u>not</u> include:

- Judge or officer of the court
- Person serving in an advisory capacity
- County health officer
- State Legislators for the purposes of NRS 281A.420 (disclosure, abstention and related matters)

updated 2011 10 0

Commission Jurisdiction

Public employees:

- ✓ Perform public duties for compensation from the state, county, city or political subdivision.
- ✓ Act under the direction or control of a public officer.

updated 2011 10 0 NRS 281A.150

Commission Jurisdiction

Former public officers and employees:

as long as the commencement of proceedings against a former public officer or employee concerning the alleged violation is not time-barred by the TWO YEAR statute of limitations (after the alleged violation or reasonable discovery of the alleged violation).

updated 2011 10 0 NRS 281A.280

"Nobody should be trying to line their pockets by serving in a public office."

~ Assemblyman Joseph E. Dini, Jr. Sponsor of AB 450 1977 Legislative Session.

updated 2011 10 0

Ethics in Government – Prohibitions

- Accepting gifts, services, favors, employment, economic opportunities, etc. which would tend to improperly influence a reasonable person.
- Using a public office to secure unwarranted privileges, preferences, exemptions, or advantages for yourself or others.

NRS 281A.400(1) and (2)

updated 2011 100

When I once asked a policeman how some of his colleagues got started on the downward path, he replied, 'It generally began with a cigar.'

~ Paul H. Douglas, Former U.S. Senator
"Ethics in Government" (Harvard University Press 1952)

updated 2011 100

Ethics in Government – Prohibitions

- Participating as an agent of government in the negotiation or execution of contracts with a business in which the person has a pecuniary interest.
- Accepting a salary or other compensation from a private source for performing public duties.

NRS 281A.400(3) and (4)

updated 2011 100

Ethics in Government – Prohibitions

- Using any information, acquired through public duties or relationships, which by law or practice is not at the time available to people generally to further one's pecuniary interest or that of others.
- Suppressing governmental reports or documents which might tend to unfavorably affect a pecuniary interest.

NRS 281A.400(5) and (6)

updated 2011 100

Ethics in Government – Prohibitions

- Using governmental time, property, equipment, or other facility to benefit a personal or financial interest. Some personal use is allowed if four specific criteria are met:

NRS 281A.400(7)(a)

updated 2011 100

Limited Personal Use of Government Property – Criteria

1. Use is authorized by the responsible public officer or the use is necessary in an emergency;
2. Use does not interfere with the performance of public duties;
3. Cost or value of use is nominal; **AND**
4. Use does not create the appearance of impropriety.

State Legislators are subject to similar restrictions set forth in NRS 281A.400(8).

updated 2011 100

Ethics in Government – Prohibitions

- Attempting to benefit a personal or financial interest by influencing subordinates.
- Seeking other employment or contracts through the use of the public office.

NRS 281A.400(9) and (10)

Additional standards for public officers

- One-year to two-year cooling off period after leaving public service. (NRS 281A.550)
- No contracts between government agencies and business entities in which public officer has a pecuniary interest. (NRS 281A.400(3) and NRS 281A.430; criminal statutes also may be implicated)

updated 2011 10 0

Additional standards for public officers

- No honoraria for performing public duty (NRS 281A.510)
- May not cause a governmental entity to make expenditures to support or oppose a ballot question or candidate (NRS 281A.520)

updated 2011 10 0

Criminal statutes applicable to public officers

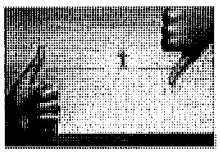
- Anti-nepotism provisions (NRS 281.210)
- Prohibited contracts (NRS 281.221)
- No personal profits from public office (NRS 281.230)

These statutes are not within the jurisdiction of the NCOE; however, some statutes within the Ethics in Government Law can trigger these criminal statutes and referral to the AG or DA for prosecution.

updated 2011 10 0

Disclosure and Abstention Requirements for Public Officers and Employees

Walking the Disclosure & Abstention tightrope



What is a
'conflict of interest' anyway?

updated 2011 10 0

"Wherever government controls a business, it becomes inevitable that the business should try to control the government"

- Paul H. Douglas, Former U.S. Senator
"Ethics in Government" (Harvard University Press 1952)

updated 2011 10 0

Conflict of Interest

A real or seeming incompatibility between one's private interests and one's public or fiduciary duties.

~ Black's Law Dictionary, Eighth Edition

updated 2011 10 0

Appearance of Impropriety

Conduct which would create *in a reasonable person's mind* a perception that the public officer's/employee's ability to carry out his or her responsibilities with integrity, impartiality, and competence is impaired.

updated 2011 10 0

Who is this "Reasonable Person"?

A hypothetical person used as a legal standard ... a person who exercises the degree of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own and of others' interests. The reasonable person acts sensibly, does things without serious delay, and takes proper but not excessive precautions.

~Black's Law Dictionary, Eighth Edition

updated 2011 100

Discussion on a"Reasonable Person"

"The reasonable [person] connotes a person whose notions and standards of behavior and responsibility correspond with those generally obtained among ordinary people in our society at the present time, who seldom allows [] emotions to overbear [] reason and whose habits are moderate and whose disposition is equitable. He is not necessarily the same as the average man—a term which implies an amalgamation of counter-balancing extremes."

- R.F.V. Heuston, *Salmond on the Law of Torts 56* (17th ed. 1977).

updated 2011 100

Voting, Disclosing, & Abstaining

- Disclosure is mandatory for any interest created by:
  - ✓ A gift or loan
  - ✓ A pecuniary interest
  - ✓ A commitment in a private capacity to the interests of others (will be discussed in a minute)
- Disclosure must be made at the time the measure is considered.

updated 2011 100 NRS 281A.420(1)

Voting, Disclosing, & Abstaining

A public officer is not required to disclose:

- ❑Campaign contributions that were reported in a timely manner pursuant to NRS 294A.125; or
- ❑Contributions to a legal defense fund that are reported in a timely manner pursuant to NRS 294A.286.

updated 2011 100 NRS 281A.420(2)

7 Suggestions to Avoid Conflicts

- Disclose
- Disclose
- Disclose
- Disclose
- Disclose
- Disclose
- Disclose

updated 2011 100

Voting, Disclosing, & Abstaining

- Abstention is required only in clear cases where the independence of judgment of a reasonable person in the public officer's situation would be materially affected.

  This determination should be made by the public officer and explained on the record.

Caren's Rule of Thumb: abstain rarely; disclose often.

updated 2011 100 NRS 281A.420(4)

Voting, Disclosing, & Abstaining

- Prohibits advocating or voting for the passage or failure of, but o herwise allows participation in the consideration of, a matter with respect to which *the independence of judgment of a reasonable person in the public officer's situation would be materially affected* by:
  - ✓ A gift or loan
  - ✓ A pecuniary interest
  - ✓ A commitment in a private capacity to the interests of others

updated 2011 100 NRS 281A.420(3)

Pecuniary Interest

- Any monetary interest or an interest that can be valued in money.
- Campaign contributions are not pecuniary interests, and do not require disclosure if they are reported timely and as required under statute. NRS 281A.420(4)(c)

updated 2011 100

Voting, Disclosing, & Abstaining

- Voting is permissible if the value the person would accrue from the vote is no greater than the value which accrues to anyone else affected by the matter.

updated 2011 100 NRS 281A.420(4)

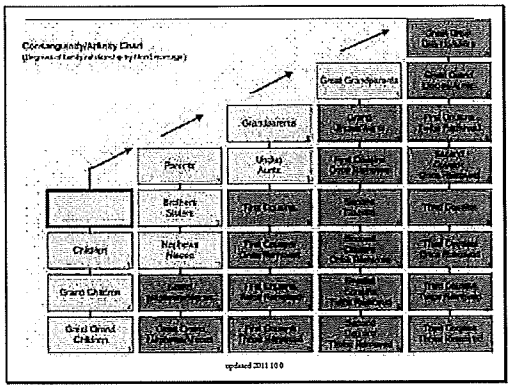
Commitment in a Private Capacity to the Interests of Others

A commitment to a person who:

- Is a member of your household;
- Is related to you by blood, adoption, or marriage within the 3rd degree of consanguinity/affinity;
- Employs you or a household member; or
- With whom you have a substantial or continuing business relationship; OR
- Other similar relationships (Deemed unconstitutionally overbroad in 2010 by Nevada Supreme Court in *Carrigan v. Commission on Ethics*. OVERTURNED by The Supreme Court of the United States in 2011. Currently pending on remand to NV Supreme Court.)

NRS 281A.420(8)

updated 2011 100



updated 2011 100

Woodbury Opinion (updated to 2009):

NCOE Opinion No. 99-56

- Disclose sufficient information to inform the public of the potential effect of the action or abstention upon you and/or your private commitments
- Apply the reasonable person standard
- Abstain in clear cases when the private commitment would likely have a material effect on a reasonable person's independence of judgment
- Abstention should not be a safe harbor

updated 2011 100

Commission Opinions

- Opinions of the Nevada Commission on Ethics are indexed on the NCOE website:

http://ethics.nv.gov

updated 2011 10 0

Penalties

- The Commission is authorized to impose civil penalties for willful violations of the Ethics in Government Law.
- A willful violation is a violation where the public officer or employee:
  - -acted inten ionally & knowingly(no bad intent required); or
  - -was in a situation where NRS 281A imposed a duty to act and the officer intentionally and knowingly failed to act in the manner required by statute.

NRS 281A.480 and NRS 281A.170

updated 2011 10 0

Penalties

- Not to exceed $5,000 for a first willful violation;
- Not to exceed $10,000 for a separate act or event that constitutes a second willful violation; and
- Not to exceed $25,000 for a separate act or event that constitutes a third willful violation.
- Referral for removal from office.

updated 2011 10 0 NRS 281A.480

Creating ethical conflicts

- Self-dealing
- Accept gifts or benefits
- Peddle influence
- Use public property for private advantage
- Use confidential information
- Seek outside employment
- Engage in post-employment conduct

updated 2011 10 0

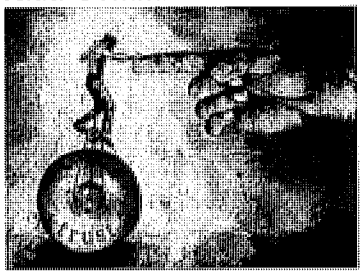
5 steps to ethical decision making

when there's no time to do anything else

1. Clarify the situation & evaluate the facts.
2. Discuss with an objective disinterested party (e.g.: agency/board counsel)
3. Choose your best ethical option. As Dr. Phil says, "You choose the behavior, you choose the consequences."
4. Implement your decision.
5. Review and modify, if necessary.

updated 2011 10 0

Nevada Commission on Ethics



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Executive Director

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updated 2011 10 0

NEVADA
ETHICS IN GOVERNMENT
MANUAL

for public officers and public employees

NEVADA COMMISSION ON ETHICS

Caren Jenkins, Esq., Executive Director

704 West Nye Lane, Suite 204
Carson City, Nevada 89703

Telephone (775) 687-5469
Fax (775) 687-1279
www.ethics.nv.gov

July 2010

Nevada Commission on Ethics

Dear Reader:

Welcome! This manual is prepared pursuant to NRS 281A.290[1] by the Nevada Commission on Ethics to assist Nevada's public servants in their efforts to preserve the public trust. The Nevada Legislature declared the following public policy in 1977 by adopting the Ethics in Government Laws:

- **A public office is a public trust and shall be held for the sole benefit of the people.**

- **A public officer or employee must commit himself to avoid conflicts between his private interests and those of the general public whom he serves.**

In the performance of their official duties, public officers and public employees serve the people of the State of Nevada. As they carry out their official duties, we expect public officers and employees to place a priority on their loyalty to the Constitution, laws and regulations of the United States and the State of Nevada and basic principles of ethics, rather than succumbing to the temptations of private gain. The public deserves and should expect no less.

We hope that this manual will provide an informative overview of ethics issues that frequently arise and a summary of Nevada laws and regulations relevant to those issues. It is not intended to replace a thorough understanding of the applicable statutes, opinions and regulations. It does not purport to provide answers to all of the ethics questions a public officer or employee is likely to confront in connection with his or her official duties, but a careful reading should help one to recognize questionable conduct and instances where further advice should be sought. This manual explains the types of opinions issued by the Commission, and provides information and resources to assist public officers and public employees to preserve the public trust.

Should any questions arise that this document does not address, the Commission staff stands at the ready to respond to questions or facilitate requests for opinion from the Commission. The public is invited to contact the Commission office with inquiries. In preserving the public trust, I am

Sincerely yours,

Caren Jenkins

Caren Jenkins, Esq.

Executive Director

---

[1] NRS 281A.290, subsection 6 provides that the Commission on Ethics shall publish a manual for the use of public officers and employees that contains:

(a) Hypothetical opinions which are abstracted from opinions rendered pursuant to subsection 1 of NRS 281A.440, for the future guidance of all persons concerned with ethical standards in government;

(b) Abstracts of selected opinions rendered pursuant to subsection 2 of NRS 281A.440; and

(c) An abstract of the requirements of this chapter.

Members of the Commission on Ethics

July 2010

Chairman
J.T. Moran III, Esq.
D - Las Vegas*

Vice Chairman
Erik Beyer
R – Reno*

Gregory J. Gale
D – Henderson*

Magdalena Groover
R - Las Vegas*

George M. Keele, Esq.
R – Minden**

Paul H. Lamboley, Esq.
D – Reno**

John W. Marvel
R - Carson City**

Jim M. Shaw
D –Reno**

---

*Appointed By Governor **Appointed by Legislative Commission

Chapter 1

The Code of Ethical Standards

Nevada's Code of Ethical Standards is found in NRS 281A.400 to 281A.660.

Nobody should be trying to line their pockets by serving in a public office.

~ Assemblyman Joseph E. Dini, Jr., Sponsor of AB 450, at a joint hearing of the Senate Gov't Affairs and Assembly Elections Committees, March 28, 1977

Nevada's Code of Ethical Standards for Public Officers and Public Employees

NRS 281A.400 outlines the following specific prohibitions:

1. Accepting gifts
2. Accessing unwarranted privileges
3. Contracting with government entities
4. Accepting private compensation for public duties
5. Using confidential information for personal gain
6. Suppressing information for pecuniary interests
7. Using government resources for personal use
8. Improperly influencing subordinates
9. Engaging in self-dealing
10. Using government publications for campaign purposes

Other similar provisions in the Ethics in Government Law include:

- Conflicts of interest, disclosure & abstention requirements
- Personal interest in public contracts
- Accepting honoraria
- Post-employment restrictions
- Required disclosures and other filings

Always do right.
This will gratify some and astonish the rest.

~ Mark Twain, February 1901

Chapter 2

Conflicts of Interest

> ***"Society's demands for moral authority and character increase as the importance of the position increases."***
>
> *- John Adams, American Founding Father and second U.S. president (1735-1826)*

Conflicts of Interest

Conflicts of interest can interfere with basic principles of fairness – everyone having the same burdens and benefits in our society. A public official may have many opportunities to take unfair advantage of his or her position or to gain a benefit at the expense of others. When public officers and employees ignore their conflicts of interest, the public trust becomes undermined. The public can lose faith in the integrity of government and the decision-making processes.

Black's Law Dictionary defines a conflict of interest as "**a real or seeming incompatibility between one's private interests and one's public or fiduciary duties.**"

The three key elements in this definition are:

- **Private Interest**. Often, this factor appears as a personal financial interest, but it also includes other sorts of interests. Examples include gaining a special advantage for a friend, spouse or child, or exacting revenge against or providing a favor to a person or entity for personal reasons.

- **Public Duty.** The problem arises when a private interest comes into conflict with the second feature of the definition, public or fiduciary duty – the duty of a public officer/employee when acting in an official capacity.

- **Incompatibility.** Private or personal interests that either interfere with or appear likely to interfere with one's objectivity are a matter of legitimate concern to those who rely on public officers/employees.

> *Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people.*
>
> *~ Henry Clay*
> *1777-1852*

It is important for public officers and public employees to avoid ***apparent*** as well as ***actual*** conflicts of interest at every opportunity. An actual conflict is situation where the public officer/employee knows that his/her judgment is likely to be compromised; whereas an apparent conflict is one where a reasonable person might think that the public officer/employee's judgment is likely to be compromised.

While a conflict of interest, in and of itself, may not always interfere with one's judgment or objectivity, it may create an 'appearance of impropriety.'

Appearance of Impropriety

An appearance of impropriety arises with an interest (private, personal or pecuniary) sufficient to create in a reasonable person's mind a perception that the ability to carry out one's responsibilities with integrity, impartiality, and competence is impaired.

At times the public officer/employee may know that a situation could compromise his/her judgment. But when even the perception of a conflict exists, one must be mindful that a reasonable person may think that the public officer/employee's judgment could be compromised. This does not necessarily mean that the public officer/employee's judgment will be impaired, it just means there is a perception it could be impaired—thus creating an appearance of impropriety. Any interests, actions, or conduct which would create a perception or appearance of impropriety need to be addressed.

Assume that no one knows anything about you and be sure to disclose any and all information regarding the actual or apparent conflict and then analyze aloud whether the conflict would materially affect the independence of judgment of a reasonable person in your circumstance. All too often, public officers and public employees assume that everyone in town knows all of his or her private affiliations.

WHO IS THIS "REASONABLE PERSON"?

According to Black's Law Dictionary, Eighth Edition, the "reasonable person" is a hypothetical person used as a legal standard, especially to determine whether someone acted with negligence; specifically, a person who exercises the degree of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own and of others interests. The reasonable person acts sensibly, does things without serious delay, and takes proper but not excessive precautions.

The reasonable man connotes a person whose notions and standards of behavior and responsibility correspond with those generally obtained among ordinary people in our society at the present time, who seldom allows his emotions to overbear his reason and whose habits are moderate and whose disposition is equitable.

He is not necessarily the same as the average man - a term which implies an amalgamation of counter-balancing extremes.

- R.F.V. Heuston, *Salmond on the Law of Torts 56* (17th ed. 1977).

AVOIDING THE APPEARANCE OF IMPROPRIETY

It may take some skill and good judgment to recognize a conflict of interest, because private and personal interests can cloud your objectivity. But, once you uncover a conflict, to avoid ethics traps, the best course of action is to DISCLOSE, DISCLOSE, DISCLOSE.

By disclosing private interests up front, others can make informed decisions based on that knowledge rather than being caught unaware. When a public officer has a private interest that conflicts with his or her professional duties, the public officer might consult with legal counsel to determine whether abstention is required.

The reasonable person test must be applied, and a determination made whether abstention is necessary, but a public officer should always abstain from voting when his or her independence of judgment IS influenced by private interests.

Disclosing a relationship or pecuniary interest, especially one which someone (reasonable person) might think would affect a vote on a matter is important, regardless whether the public officer intends to abstain.

Repetitive disclosure does not violate state law; voting without proper disclosure may.

Public employees should disclose such interest to their supervisor as certain conflicts may necessitate their abstention from a particular project or decision making process.

VOTING, DISCLOSING, & ABSTAINING

Voting is permissible (and conversely, abstention is not appropriate) if the value which the public officer would accrue as a result of voting is no greater than the value which accrues to anyone else.

Public disclosure of a conflict of interest must be made at the time the measure is considered, and is **mandatory** for any interest created by:

1. **A gift or loan,**
2. **A pecuniary interest, or**
3. **A commitment in a private capacity to the interests of others.**

A public officer may not advocate or vote for the passage or failure of a matter, but otherwise may actively participate in a matter if the independent judgment of a reasonable person would be affected by a gift or loan, a pecuniary interest or a commitment in a private capacity to the interests of others*

Abstaining without disclosing a conflict of interest does not fulfill the statutory requirements. The act of abstaining is an official action. The law requires disclosure <u>before</u> action is taken.

Commitment in a Private Capacity to the Interests of Others

This "term of art" is defined in statute. A commitment in a private capacity to the interest of others is a commitment to a person who:

- Is a member of the public officer's household;
- Is related to the public officer within the 3rd degree of consanguinity;
- Employs the public officer or a household member; or
- With whom the public officer has a substantial or continuing business relationship.
- OR, other similar relationships.

Other similar relationships might include domestic partnerships, volunteer service, roommates and the like. Such relationships might create such influence over a person's ability to be objective that the Legislature required any such relationships to be disclosed in every instance.

Wherever government controls a business, it becomes inevitable that the business should try to control the government.

Paul H. Douglas, Former U.S. Senator
"Ethics in Government" (Harvard Univ. Press 1952)

AVOIDING PROBLEMS WITH DISCLOSURE & ABSTENTION

1. Before the meeting, if possible, thoroughly review all meeting materials to identify any matters which may involve any of the following:

- the interests of any persons or entities from which you may have accepted a gift or loan.

- reasonably being affected by your commitment in a private capacity to the interest of others.

- any pecuniary interest you may have, regardless of the amount.

2. Consider, and seek advice from your counsel if desired, whether the disclosed conflict requires abstention.

3. Make a public disclosure that sufficiently informs the public of the nature of the conflict and the potential effect of your action or abstention on the person or entity identified above or upon you.

4. Disclosure must be made at the time the matter is considered. If it is a recurring or ongoing matter, disclosure must be made every time the matter is considered.

5. The record should reflect in detail your disclosure and your decision and rationale whether to abstain.

All disclosures & abstentions should be explained so the public can understand the nature of the conflict of interest presented and the public officer's rationale, applying the "reasonable person standard," for deciding to vote or abstain from voting.

TIMING & LOCATION OF DISCLOSURES

- If you are a member of a public body, other than a member of the Nevada Legislature, your disclosure must be made on the public record to the chair and other members of the public body.

- If you are a public officer or employee and hold an appointive office, your disclosure must be made to the supervisory head of your organization, preferably in writing.

- If you hold an elective office, your disclosure must be made to the general public in the area from which you are elected.

BENCHMARK COMMISSION OPINIONS REGARDING DISCLOSURE & ABSTENTION

HOW MUCH NEEDS TO BE DISCLOSED?

Woodbury 99-56 (updated 2010)

- Disclose sufficient information to inform the public of the potential effect of the action or abstention upon yourself and/or private commitments

- Apply reasonable person standard

- Abstain when private commitments would materially affect a reasonable person's independence of judgment

- Abstention should not be a safe harbor

DOES A FORMER SPOUSE HAVE AN INTEREST?

Hoefer 03-05

The Commission determined that a former martial relationship, where the couple had been divorced more than 15 years and had two grown children who were independent, did not create a "commitment in a private capacity to the interest of another" that would disqualify one from performing duties as a member of a board while the other is an administrator under the same department.

WHEN TO DISCLOSE AND WHEN TO ABSTAIN

Boggs-McDonald 03-34

With regard to matters subject to an appearance of a conflict between her private commitments and interests as a member of the Board of Directors for Station Casinos and her public duties as an elected member of the Las Vegas City Council:

1. When the nexus between a matter before the Las Vegas City Council and Station Casinos is clear to Councilwoman Boggs McDonald, she must disclose sufficient information concerning her private commitments to and interests in Station Casinos to inform the public of the potential effect of her action as required by NRS 281.501(4); and, after making such proper disclosure, she must refrain from advocating the passage or failure of the matter and abstain from voting upon the matter, all in accord with NRS 281.501(2).

2. When Councilwoman Boggs McDonald believes a nexus between a matter before the Las Vegas City Council and Station Casinos would not materially affect the independence of judgment of a reasonable person in her situation under the circumstances presented in the particular matter and, therefore, her abstention in the matter is not required pursuant to NRS 281.501(2), in addition to disclosing sufficient information concerning her private commitments to and interests in Station Casinos to inform the public of the potential effect of her action as required by NRS 281.501(4), she must also disclose the reason she believes that the independence of judgment of a reasonable person in her situation would not be materially affected under the circumstances and why, therefore, her abstention is not required.

INTERESTS IN SPOUSE'S EMPLOYMENT

Louritt & Roman 03-43 & 03-44

Mr. Louritt and Mr. Roman each requested the Commission's advisory opinion addressing the same issue: Do the provisions of NRS 281.501 require him to abstain from participating in deliberations and voting on collective bargaining agreements merely because his spouse is a member of the collective bargaining unit being discussed and/or voted upon?

Pursuant to the requirements of NRS 281.501(2), when a collective bargaining agreement that affects Mr. Louritt's spouse (who is as a classified employee of the Douglas County School District) and/or Mr. Roman's spouse (who is employed as a certified teacher for the Douglas County School District) comes before the Douglas County School Board, Mr. Louritt or Mr. Roman, as the case may be, must, after making a proper disclosure pursuant to NRS 281.501(4) and the Commission's published opinions interpreting those disclosure standards, (a) refrain from advocating the passage or failure of the matter and (b) abstain from voting on the matter.

ADVOCACY OR INFORMATION?

Kubicheck 97-07

"...the line dividing allowable factual testimony and prohibited advocacy is razor thin. Statements that begin, "in my opinion...," "I think...," "I believe...," or "I would hope...," would be signals that the statement might be more advocate than informative...A statement of advocacy is prohibited, even if factual, because the intent of advocacy is to get the hearer to believe the same as the speaker, and where the speaker has special influence and power because of her position, the hearer might be influenced to act not because of the merits of the speaker's argument but because of the speaker's position itself. On the other hand, a statement of fact, without any overtones of advocacy, is allowed because the intent."

Chapter 3

Disclosures Required of Public Officers

AM I A PUBLIC OFFICER?

NRS 281A.160 defines a public officer as a person:

- elected or appointed

- to a position which is established by the constitution of the State of Nevada, a statute of this state or an ordinance of any of its counties or incorporated cities, and

- which involves the exercise of a public power, trust or duty.

The "exercise of a public power, trust or duty" is defined as:

- Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy;

- The expenditure of public money; and

- The administration of laws and rules of the state, a county or a city.

NRS 281A.160 defines a public officer as a person elected or appointed to a position which is established by the constitution of the State of Nevada, a statute of this state or an ordinance of any of its counties or incorporated cities, and which involves the exercise of a public power, trust or duty.

Statute defines "the exercise of a public power, trust or duty" as:

(a) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy;
(b) The expenditure of public money; and
(c) The administration of laws and rules of the state, a county or a city.
These criteria are conjunctive, meaning all 3 must be met in order to meet the definition of a public officer.

A "Public officer" does not include:

(a) Any justice, judge or other officer of the court system;
(b) Any member of a board, commission or other body whose function is advisory;
(c) Any member of a board of trustees for a general improvement district or special district whose official duties do not include the formulation of a budget for the district or the authorization of the expenditure of the district's money; or
(d) A county health officer appointed pursuant to NRS 439.290 (by a county commission).

Examples of those who may not be public officers: planning commissions, neighborhood advisory boards, parks & recreation boards,

Financial Disclosure Statement (FDS)

A public officer who is entitled to receive annual compensation of $6,000 or more must file a Financial Disclosure Statement annually on or before January 15th. NRS 281A.600 and 281A.610.

Acknowledgment of Statutory Ethical Standards (ACK)

Every public officer must acknowledge in writing that he or she has received, read and understands the statutory ethical standards. Public officers elected or appointed to a definite term must file this form at the beginning of the term. Persons appointed to an indefinite term must re-file this form by January 15 of each even-numbered year. NRS 281A.500.1

Agency Representation Disclosure (ARD)

Any public officer who has represented or counseled a private person for compensation before a state agency of the Executive Branch shall make a disclosure of each such representation on a form prescribed by the Commission not later than January 15th of each year for the preceding calendar year in which such representation took place. NRS 281A.410.3

The Commission has created forms for each of these required disclosures and filings via the regulatory process. The forms may be found on the Commission's website at www.ethics.nv.gov.

Chapter 4

Types of Requests for Opinion

It would be impossible to draft an ethics legislation that would cover every possible case, but the saving grace of this legislation is that the individual in a "twilight" area can request an opinion before taking an action.

~ Senator Richard Bryan, Sponsor of SB 351 in the 1977 Session of the Nevada Legislature in a joint hearing of the Senate Gov't Affairs and Assembly Elections Committees, March 28, 1977

CONFIDENTIAL FIRST-PARTY ADVISORY OPINIONS (NRS 281A.440.1)

Advisory opinions can be requested by any public officer or public employee relating to his or her own past, present or future conduct and how it relates to the Ethics in Government Law.

If a public officer or public employee is trying to determine whether a situation might conflict with the Ethics in Government Law, he may request advice from the Commission. Consideration of these advisory opinions has been statutorily exempted from the open meeting law. The fact of the request and the materials and opinion related thereto are all completely confidential. The requester holds the confidence, and it can be waived expressly or impliedly. Unless confidentiality is waived, the ultimate opinion will be published in an abstract format.

Advisory opinion requests can be processed in a much shorter period of time and need not be held in conjunction with the Commission's regularly scheduled meetings. These opinions are binding on the requester; therefore, if the public officer or employee acts contrary to the opinion rendered, the Commission may file a complaint on its own motion against that public officer or employee.

Advisory opinions are excellent tools to have in a public officer or employee's "Ethics Toolbox." They can provide guidance on your specific situation. The process of obtaining an advisory opinion can be very enlightening and educational for the requester and the Commission, and the resulting abstracted opinion can be very helpful guidance for public officers and employees in similar situations.

Upon written request from a public officer or public employee, which must be filed with the Commission's First Party Opinion Request form, the Executive Director and Commission Counsel review the request for jurisdictional purposes.

Thereafter, the Commission Counsel researches the statutes and cases the Commission has already addressed, and prepares a memorandum outlining the issues for Commissioners. It is imperative that the requester provide all of the relevant facts for the Commission to provide meaningful advice. These first party opinions are only as helpful as the facts provided.

A closed session hearing is scheduled and posted as a meeting of the Commission, although the anonymity of the requester is carefully preserved. The Commission may wish to ask questions and supplement the facts at the closed session hearing it holds, so the requester should arrive with any additional information that may assist the Commission to provide guidance. Typically, an oral opinion is rendered in the form of a motion at the initial hearing on the matter. However, occasionally, the commission will table its opinion pending

additional information. The burden lies on the requester to provide the Commission the information it requires.

A formal written opinion follows the hearing. Commission staff "sanitizes" the opinion for publication on the Commission's website, removing references to the requester's name, location and position in government. The publication of this abstract is offered in the hope that it will provide helpful guidance to others similarly situated.

THIRD-PARTY ETHICS COMPLAINTS (NRS 281A.440.2)

The Commission has authority to render an opinion interpreting the Ethics in Government Law and apply the standards to a given set of facts and circumstances upon the request from a person, a specialized or local ethics committee; and upon the Commission's own motion.

Requests for opinion received under this provision have been defined by the Commission as "ethics complaints" and are most commonly filed by third parties against a public officer or public employee.

The Commission has adopted procedural regulations that outline how these complaints are processed. Those regulations appear in chapter 281A of Nevada Administrative Code.

Initial Review

The Commission exercises very limited jurisdiction. Each complaint is first reviewed by the Commission's Executive Director and Commission Counsel to determine whether the complaint will be accepted. To be accepted by the Commission, a complaint must contain (1) an allegation of a violation of chapter 281A of Nevada Revised Statutes; (2) the subject of the complaint must be a specific public officer or a public employee; and (3) some form of credible evidence supporting the allegations made must accompany the complaint.

Very often the Commission lacks jurisdiction over complaints it receives because either the subject of the complaint is not a public officer or employee of the State or the complaint's allegation are not related to a violation of chapter 281A of NRS. The Commission has no ability to address criminal matters, although if during the course of an investigation the Commission uncovers criminal activity a referral may be made to the appropriate authority. On March 29, 2005, U.S. District Court Judge Lloyd George entered an order which enjoined the Nevada Commission on Ethics from enforcing the provisions of NRS which provide for the filing of campaign practices complaints. Those statutes were repealed in 2005. Therefore, the Commission is not able to accept complaints regarding campaign practices.

All complaints received by the Commission are initially reviewed for jurisdiction and sufficiency by the Executive Director and Commission Counsel. If a complaint fails to meet either of these tests, the complaint is returned to the requester. To pass this initial review, a complaint must allege a violation of NRS 281A by a particular public officer or public employee (jurisdiction) and provide some credible evidence to support the allegations, other than a newspaper account (sufficiency). The filed complaint must also include the proper form and the required number of copies.

Once the initial review is passed, the requester and the subject of the complaint receive notice, and the subject is permitted time to respond to the allegations. Once the response is filed, the Commission's full-time investigator takes the matter, under the direction of the Executive director, and a thorough investigation of the allegations is undertaken.

Investigatory Panel

When the investigation is completed, staff presents the Investigator's Report and Executive Director's Recommendations to two members of the Commission. These two members form an "Investigatory Panel" and review all of the facts and evidence collected to determine whether just and sufficient cause exists to forward each of the allegations in the complaint to the full commission for a hearing.

If both Commissioners agree that just and sufficient cause exists, the matter is forwarded to the full Commission. If only one of the panelists believes that just and sufficient cause exists, the matter goes to the full commission. Only if both panel members agree that just and sufficient cause does NOT exist, is the matter dismissed. The investigatory panel addresses each of the allegations in the complaint, if more than one is presented, and can forward all, some or none of the allegations to the Commission.

Confidentiality and Public Disclosure

ONLY AFTER the panel has made its determination is the fact of the complaint made public. Before that event, the Commission and its staff are prohibited from confirming or denying the receipt of a complaint. But the Panel Determination is posted on the Commission's website shortly after the panel meets, and the file is made available to the public.

If the Investigatory Panel find that just and sufficient cause exists to forward any or all of the allegations in a complaint to the full Commission for hearing, a Notice of Hearing and Scheduling Order are issued to the subject of the complaint, and deadlines are selected for the preparation for the public hearing.

Public Hearing

All Commission hearings on these requests for opinion are conducted in open public sessions. Witnesses are subpoenaed, evidence and testimony are considered, and the Commission typically deliberates to a conclusion at the hearing whether the subject's conduct violated some provision of NRS 281A. Rarely will the Commission take a matter under advisement and issue its determination at a later time. However, occasionally the Commission will continue a hearing to allow an opportunity o gather more evidence or to accommodate a witness.

If the commission finds that the subject has violated NRS 281A, the next determination to be made is whether the violation was willful; i.e., knowing and intentional. Should the commission find that the violation was willful, it is empowered to impose financial and other sanctions of up to $25,000 and even refer a public officer or employee for removal from office. With or without such sanctions, the stigma of having been found to have violated the Ethics in Government Laws can be quite damaging to a public officer or public employee's career and image.

Of course, any subject found to have violated the Ethics in Government Laws may appeal the Commission's decisions to the District Court via the judicial review process. Several such appeals have been taken which provide important guidance to public officers, public employees, the Nevada Legislature and the Commission itself.

* * * * *

Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, NV 89703

Tel: 775-687-5469
Fax: 775-687-1279

E-mail: ncoe@ethics.nv.gov
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Mike Vavra, MPA
Investigator

Kelly Buschman, JD
Legal Research Assistant

Michelle Ené
Executive Assistant

When in doubt, look it up! If you're still unclear, ask for help.

A public office is a public trust and shall be held for the sole benefit of the people. NRS 281A.020

To maintain and enhance that public trust, statutes are in place to assure that certain conflicts of interest which may signal bias by or improper influence of Nevada's public officers are publicly known.

This pamphlet outlines three required written disclosures. It provides an introduction to and guidelines for compliance with the statutes. However, this is no substitute for reading and understanding the law yourself. Therefore, citations are also provided.

Of course, if your review of the law leaves you uncertain about the requirements, you may contact the Secretary of State or the Commission on Ethics for information.

Best wishes, and **thank you for your public service.**

Information is the currency of democracy.

~ Thomas Jefferson

THESE OFFICES ARE PROHIBITED FROM PROVIDING LEGAL ADVICE, but for information about procedures or with general questions, contact:

Secretary of State, Elections Division
101 North Carson Street, Suite 3
Carson City, NV 89701-3714
Phone: 775-684-5705
Fax: 775-684-5718
Email: nvelect@sos.nv.gov

Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, NV 89703
Phone: 775-687-5469
Fax: 775-687-1279
Email: ncoe@ethics.nv.gov

NEVADA WRITTEN DISCLOSURES required of Public Officers

Compliments of:

Commission on Ethics

and

Secretary of State
Ross Miller

AGENCY REPRESENTATION DISCLOSURE

NRS 281A.410(3)

Form available at www.ethics.nv.gov.

Who must file?

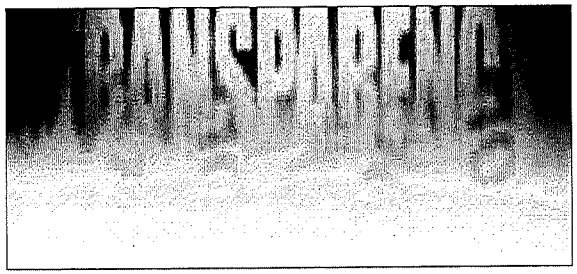
Any public officer or State Legislator who, in a private capacity, has received compensation to represent or counsel a private person before an agency of the Executive Branch of State government.

When to file?

Every year by January 15 for the preceding calendar year.

Where to file?

Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, NV 89703
FAX: 775-687-1279
Email: NCOE@ethics.nv.gov



FINANCIAL DISCLOSURE STATEMENT

NRS 281.559-appointed public officers
NRS 281.561-candidates and elected public officers
Visit www.nvsos.gov.

Who must file?

All public officers elected, appointed or appointed to fulfill an unexpired term of an elective office, **EXCEPT** those:

1 - appointed to an advisory board.

2 - appointed, but not entitled to receive $6,000 or more in annual compensation.

These public officers are not required to file an FDS at all.

When to file?

Every year by January 15 for the preceding calendar year.

Where to file?

Elected and appointed public officers must file electronically with the Secretary of State's Elections Division at www.nvsos.gov.

Judicial officers mail or deliver to:

Nevada Supreme Court
Administrative Office of the Courts
201 S. Carson Street, Suite 250
Carson City, Nevada 89701

ACKNOWLEDGEMENT OF STATUTORY ETHICAL STANDARDS

NRS 281A.500

Form available at www.ethics.nv.gov.

Who must file & When?

Public officers elected at a general election.	**By Jan. 15** of the year following election. Repeat for each new term of office.
Public officers elected in other than a general election.	**Within 30 days of taking office.** Repeat for each new term of office.
Appointed public officers.	**Within 30 days of taking office.** Repeat for each new term of office.
Appointed public officers serving at the pleasure of an appointing authority with no definite term of office.	**Within 30 days of taking office and also by Jan. 15** of every even-numbered year while holding that office.

Where to file?

Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, NV 89703
FAX: 775-687-1279
Email: NCOE@ethics.nv.gov

PUBLIC OFFICERS AND PUBLIC EMPLOYEES:

WHEN YOU THINK YOU MAY HAVE A CONFLICT OF INTEREST AT A PUBLIC MEETING, ASK YOURSELF THE FOLLOWING QUESTIONS TO DETERMINE WHETHER TO DISCLOSE THE CONFLICT OR BOTH DISCLOSE AND ABSTAIN FROM PARTICIPATING.

See NRS 281A.420

DOES **THE MATTER BEFORE ME** HAVE TO DO WITH:

1. MY ACCEPTANCE OF A **GIFT OR A LOAN?**
2. MY **PECUNIARY** (any economic) **INTEREST?** OR
3. THE INTERESTS OF A **PERSON TO WHOM I HAVE A COMMITMENT IN A PRIVATE CAPACITY?** That's defined as a person who is:

   A. A MEMBER OF MY **HOUSEHOLD** (someone who lives with me),
   B. A PERSON **RELATED** TO ME within the third degree of blood or marriage (namely: a spouse, child, grandchild, great grandchild, great grandparent, grandparent, parent, brother, sister, niece, nephew, aunt, or uncle),
   C. MY **EMPLOYER;** or the employer of a member of my household,
   D. A PERSON WITH WHOM I HAVE A **SUBSTANTIAL AND CONTINUING BUSINESS RELATIONSHIP,** OR
   E. A PERSON **SUBSTANTIALLY SIMILAR** to one of the people described in this paragraph 3, items A, B, C, or D above.

If my answer to any of the above **is YES,** then, **when the matter is being considered,**

1. I must disclose, on the record, sufficient information to fully inform or put the public on notice of the potential effect of my acting or abstaining on the matter due to my conflict of interest. My disclosure must **describe the nature and extent of the relationship that is the source of the conflict**.

AND

2. I must abstain only in a clear case where the independence of judgment of a reasonable person in my situation would be materially affected by the conflict just disclosed. I should undertake the abstention analysis on the record immediately after I state my **disclosure**.

WHAT YOU MIGHT SAY: "Mr./Madam Chair, NRS 281A.420 requires me to disclose a conflict of interest. The matter before this body affects **my acceptance of a gift or loan / my pecuniary interest / my commitment in a private capacity** to the interests of Daisy Duchess, my foster mother. (Next, you must take time to describe the potential conflict between your interest and the matter before the body or board on which you serve.) Ms. Duchess' doughnut business will be financially enhanced if we approve building the new police station next door to her shop, and she will likely face financial ruin if we don't. Ms. Duchess is everything to me even if she isn't my biological mother. She raised me in her home from age 3 until I turned 19. Our relationship is substantially similar to a blood relation, probably closer, so I conclude that the independence of judgment of a reasonable person in my situation **would / would not** be materially affected by this relationship, and because this **is / is not a clear case** of a disqualifying conflict of interest, I am going to be **voting / abstaining from voting** in this matter." (If you decide to abstain, you must refrain from advocating for or against the matter in any way.)

REMEMBER, YOU MAY DISCLOSE EVEN AN APPEARANCE OF IMPROPRIETY, THOUGH YOU ARE NOT REQUIRED TO DO SO. THIS TYPE OF DISCLOSURE ASSISTS IN YOUR DUTY TO AVOID CONFLICTS OF INTEREST AND TO ENHANCE AND MAINTAIN THE PUBLIC TRUST. SEE NRS 281A.020.

DISCLAIMER: THIS DOCUMENT IS INTENDED AS A GENERAL GUIDE AND IS ***NOT TO BE CONSTRUED AS PROVIDING LEGAL ADVICE.*** IN ADDITION, IT DOES NOT FULLY ADDRESS THE DISCLOSURE AND ABSTENTION REQUIREMENTS OF THE ETHICS IN GOVERNMENT LAW AND ***OFFERS YOU NO PROTECTION*** FROM LIABILITY - - - EVEN IF YOU FOLLOW ITS PROVISIONS.

If you are a public officer or employee presented with a potential conflict of interest, please consult with the attorney for the body on which you serve, seek other legal advice, or contact the Commission on Ethics.

STATE PUBLIC CHARTER SCHOOL AUTHORITY

SUPPORTING DOCUMENT

S U B J E C T: General discussion related to contested cases to be heard at a public hearing before the Authority

/ /	Public Workshop
/ /	Public Hearing
/ /	Consent Agenda
/ /	Regulation Adoption
/ /	Approval
/ /	Appointments
/ x/	Information
/ /	Action

MEETING DATE: May 3, 2012
AGENDA ITEM: 6
NUMBER OF ENCLOSURE(S):

PRESENTER(S): Shane Chesney, Senior Deputy Attorney General

RECOMMENDATION:

FISCAL IMPACT:

BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):

LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES): 30 mins

BACKGROUND: **NRS 233B.032 "Contested case" defined.** "Contested case" means a proceeding, including but not restricted to rate making and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing, or in which an administrative penalty may be imposed.
(Added to NRS by 1977, 1382)

SUBMITTED BY: _____

STATE PUBLIC CHARTER SCHOOL AUTHORITY

SUPPORTING DOCUMENT

S U B J E C T: National Association of Charter School Authorizers presentation

/ /	Public Workshop
/ /	Public Hearing
/ /	Consent Agenda
/ /	Regulation Adoption
/ /	Approval
/ /	Appointments
/ x/	Information
/ /	Action

MEETING DATE: May 4, 2012

AGENDA ITEM: 7

NUMBER OF ENCLOSURE(S):

PRESENTER(S): William Haft, Vice President Authorizer Development National Association of Charter School Authorizers

RECOMMENDATION:

FISCAL IMPACT:

BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):

LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES): 150 minutes

BACKGROUND:

Mission Statement: The mission of the National Association of Charter School Authorizers is to achieve the establishment and operation of quality charter schools through responsible oversight in the public interest.

SUBMITTED BY: _____

STATE PUBLIC CHARTER SCHOOL AUTHORITY

SUPPORTING DOCUMENT

S U B J E C T: Approval of March 23, 2012 Meeting Minutes

/ /	Public Workshop
/ /	Public Hearing
/ /	Consent Agenda
/ /	Regulation Adoption
/ /	Approval
/ /	Appointments
/ x/	Information
/ x /	Action

MEETING DATE: May 4, 2012
AGENDA ITEM: 2
NUMBER OF ENCLOSURE(S):

PRESENTER(S): Kathleen Conaboy, SPCSA Authority President

RECOMMENDATION: Approve March 23, 2012 Meeting Minutes

FISCAL IMPACT:

BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):

LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES): 5 mins

BACKGROUND: The Authority Board will approve the meeting minutes from March 23, 2012.

SUBMITTED BY: _____

NEVADA STATE PUBLIC CHARTER SCHOOL AUTHORITY

March 23, 2012

Nevada Legislature
Room 2134
401 South Carson Street
Carson City, Nevada

And

Grant Sawyer Building
Room 4412
555 East Washington Avenue
Las Vegas, Nevada

MINUTES OF THE REGULAR MEETING
(Video Conferenced)

AUTHORITY MEMBERS PRESENT:

In Las Vegas:
Kathleen Conaboy
Elissa Wahl
Robert McCord
Marc Abelman
Nora Luna

In Carson City:
Melissa Mackedon

On Conference Call:
Michael Van

AUTHORITY MEMBERS ABSENT:
Michal Van was absent for the first hour of the meeting.

AUTHORITY STAFF PRESENT:

In Las Vegas:
Mr. Steve Canavero, Director, State Public Charter School Authority

In Carson City:
Tom McCormack, Education Program Professional, State Public Charter School Authority
Angela Blair, Education Program Professional, State Public Charter School Authority
Katherine Rohrer, Education Program Professional, State Public Charter School Authority
Allyson Kellogg, Management Analyst, State Public Charter School Authority
Danny Peltier, Administrative Assistant, State Public Charter School Authority

LEGAL STAFF PRESENT:

In Las Vegas:
None

In Carson City:
Mr. James Edgar Irvin, Deputy Attorney General

NEVADA DEPARTMENT OF EDUCATION STAFF PRESENT:
Susanne Etter, Chief Auditor, Nevada Department of Education

AUDIENCE IN ATTENDANCE:

In Las Vegas:
Dominic DiDiFelice
Lucretia A. Glidewell
Robin Vitiello
Joan Sando
Maurice Flores
Kristin Marsala
Katie Brase
Larry Mason
Margot Allaire
Santana Garcia
Javier Trujillo
Susan Waters
Katherine Von Collenberg
Mr. Lisa Schiano
Audrey Billingsley
Roger Dunnavant
Gary Manning
Andrew Platt
Mike Kazek
Curt Carlson

In Carson City:
Mr. Eugene Paslov
Brian Flanner
Jennifer Dukek
Edith Grub
Patty Knight

DRAFT

CALL TO ORDER; ROLL CALL; PLEDGE OF ALLEGIANCE; APPROVAL OF AGENDA
President Conaboy called the meeting to order at 2:04 p.m. with attendance as reflected above.

Agenda Item 2 - Public Comment
None

President Conaboy asked for a motion for a flexible agenda.

Member Luna moved to approve a flexible agenda. Member McCord seconded. The motion carried unanimously.

Agenda Item 3 - Approval of the Agenda

President Conaboy asked for a motion for approval of the agenda.

Member McCord moved to approve the agenda. Member Abelman seconded. The motion carried unanimously.

Agenda Item 4 - Approval of the February 10, 2012 Meeting Minutes

President Conaboy asked for a motion for approval of the minutes.

Member McCord moved to approve the agenda. Member Abelman seconded. The motion carried unanimously.

Agenda Item 5 – Authority Update

President Conaboy explained there was some publicity after the first meeting. Some of the coverage was slightly erroneous. Both Director Canavero and President Conaboy contacted the newspapers and asked them if they could speak to their editorial board. They met with the Las Vegas Review Journal, the Las Vegas Sun, and will be meeting with the Reno Gazette Journal in the coming weeks. President Conaboy asked that if there are any others on the Authority who would like to participate in the meetings to feel free and join her and Director Canavero.

Director Canavero was invited by the Nevada Association of School Superintendents to attend their meetings as a member. Director Canavero was put on the upcoming April 5th agenda to discuss the status, growth, and challenges in Nevada charter schools.

Agenda Item 6 – Director's Report

Director Canavero discussed the Nevada Department of Education's role in the Elementary and Secondary Education Act (ESEA). The SPCSA staff hosted a conference call with the Charter Schools to explain what was in the ESEA Waiver. Director Canavero said the ESEA Waiver was going to be a giant step forward in terms of measuring accountability in all schools including charter schools.

Director Canavero explained at the last SPCSA Authority meeting the Authority asked SPCSA staff to send out draft language for a Mission Statement and Strategic Planning. The SPCSA staff received good feedback from the schools and Director Canavero is going to merge the feedback of both the Mission Statement and Strategic Planning to create one document.

Director Canavero had an opportunity to meet with the new State Superintendent of Public Instruction, Mr. James Guthrie. Mr. Guthrie had some questions about charter schools in Nevada and Director Canavero said overall, the meeting went really well.

Director Canavero discussed Senate Bill 212 and the regulations that are in place for charter schools wishing to change sponsors. Director Canavero believes having the option to change sponsors is something all charter schools should have the ability to do. SB 212 allows for sponsorship change, but there is not a clear process for how the change should occur. Nevada Revised Statues states that a Governing Body of a charter school may request, at anytime, a change in sponsorship. The SPCSA staff is working with the Nevada Department of Education, local districts, and other sponsors to develop a more clearly defined process for sponsorship changes.

DRAFT

President Conaboy asked Director Canavero if he thought that charter schools who were wishing to change sponsorship would be able to do so before the beginning of the next academic year.

Director Canavero said SPCSA staff believes this will be possible. He said since Nevada Administrative Code (NAC) has already been written regarding sponsorship change then all that will be needed is a more clearly defined process that schools will be able to reference if they want to change sponsorship.

President Conaboy asked if new regulatory guidance needed to be developed before sponsorship can change.

Director Canavero said he believed no new regulatory guidance was needed because NAC is fairly detailed already. He said it was more a matter of organizing the information in a way that is accessible to charter schools.

Director Canavero said the SPCSA staff held a New Charter School Applicant Training in Las Vegas and Carson City. The purpose of the training is for people who wish to open a charter school to be able to go through the application process with staff and have questions and concerns answered regarding the application process. Director Canavero said the feedback was positive and the SPCSA office considered both trainings a success.

Director Canavero discussed the Charter Schools' Program Grant. Unfortunately Nevada was not selected for the State Education Agency Grant. He explained that schools will have an opportunity to apply for grant money on their own though.

President Conaboy asked if it was normal to have this much money clustered around a few states.

Director Canavero said yes this is normal.

Director Canavero discussed the new SPCSA position that had been approved at the February 10, 2012 meeting. He said he had tried to recruit a non-classified position but that was turned down. Instead, he decided to recruit a classified position called an Administrative Services Officer. This person would help with financials of both the SPCSA office and the sponsored charter schools.

Director Canavero explained that the Annual Performance Audits (APA) were being conducted now. He said after the audits have been completed a report will be drafted and presented to the Authority Authority at a future meeting.

President Conaboy asked what the reports entailed.

Director Canavero said that historically the report has been used to determine if anything at the school rises to a significant NRS violation and would be grounds for revocation of the charter. Other than that the reports are not used for continuing improvement unless the school decides to implement the findings on their own.

Director Canavero then moved to SPCSA staff updates. Angela Blair has been working on the Title programs, Katherine Rohrer has been working with the Department of Education on the Accountability Report Card data, Allyson Kellogg has been working on Student Information Systems, and Tom McCormack has been working on guidance for the schools on what is required of a governing body.

Member McCord recommended that the SPCSA look into communicating with the charter schools about collecting the National Clearinghouse Data that helps track pupils' post-secondary education.

DRAFT

Agenda Item 7 – Consideration of the Application Review Team's recommendation for the Approval of New America School Las Vegas Charter School Subsection 7 Charter.

Member McCord said he had acquaintances on the Committee to Form New America School Las Vegas, but there was no conflict. Member Luna said she had acquaintances on the Committee to Form New America School Las Vegas, but there was no conflict.

Director Canavero explained that the SPCSA staff was recommending approval for a Subsection 7 Charter for New America School Las Vegas. The school will be opening in the Fall of 2013. It will be the last charter school application that will be considered outside of the approved timeline from the February 10, 2012 meeting. The application was turned in before the timeline was established and SPCSA staff felt it would be appropriate to review the application in a timely matter. New America School Las Vegas will provide a comprehensive high school curriculum while also focusing on English Language Learners (ELL). The New America Charter School Las Vegas is considered a replicator school because this model is in existence in other states. The Non-profit New America Schools operates five schools in Colorado and New Mexico. Director Canavero explained the difference in approving a replicator school as opposed to a new charter school. Director Canavero then detailed the review teams' findings.

New America School Las Vegas' Committee to Form members were asked to come speak on behalf of their school. Dominic DiFelice, representing New America Non-Profit, Kristin Marsala, Maurice Flores, Javier Trujillo, and Santana Garcia testified on behalf of the school. The Authority had questions regarding curriculum, teacher endorsements, and school segregation.

Member Luna expressed concern with the school's idea to use the Clark County School District Curriculum.

Superintendent DiFelice said the school uses curriculum already established in Colorado, but the Nevada application asked for alignment with Nevada curriculum. Superintendent DiFelice said they found it difficult to align Colorado's curriculum to Nevada. He said it is a lot easier to look at existing curriculum in Clark County School District and customize it accordingly.

Member McCord asked if the Committee to Form had considered the isolation of certain student groups with the model that New America Schools uses. McCord referenced Lau vs. Nichols with regard to segregating pupils due to language and ethnicity. He said he felt the precedent did not apply here, but he wanted to school to be aware of the issue.

Superintendent DiFelice said they receive that question from all the Authoritys they go in front of. He said there is no concern; most of the schools are rich in diversity. The ELL may be 80 percent of the student population, but the actual ethnic breakdown is much more diverse. New America School Las Vegas' goal is to serve underserved or unserved pupils.

Vice President Wahl asked if members of the New America Non-profit were going to move to Nevada to open the school. Superintendent DiFelice said that all prospective schools pay $50,000 per year fee. This is used to reimburse New America employees for travel, hotel accommodations, and other expenses that are incurred during the startup of the school. The New America employees do all of the advance work to hire administrators, locate a facility, and human resource work to get the new school up and running. Vice President Wahl also asked if the New America School Las Vegas will offer parents language education. Superintendent DiFelice said the New America School in Colorado applied for and received the 21st Century Community Learning Center Grant and they will have the opportunity to do the same in Nevada. The grant provides for education amongst the parents in areas like language, communications, and writing. Superintendent DiFelice also said that many of the school's population will come to them already 18 or 19 years old, and sometimes making parental contact with the home proves to be difficult.

President Conaboy had some concerns with how the school is planning on budgeting. Director Canavero said that an amended budget would be required in the Sub Section 7 Charter.

The Authority continued with questions for the Committee to Form including full time daycare, insurance coverage, and New America School Graduation Rates. New America School said that it would not provide daycare services because of insurance reasons. New America School also said that due to the kind of pupils they target, the graduation rate of the school will be lower than the Clark County School District average.

Member Abelman moved to approve the Application Review Team's recommendation for the Approval of New America School Las Vegas Charter School Subsection 7 Charter. Vice President Wahl seconded. The motion carried unanimously.

Agenda Item 8 – Presentation of Proposed Purchase of Real Property for Quest Academy. Review and discussion of timeline, security interest, and property documents

Before the discussion began, Member Abelman said he needed to recuse himself from the discussion because he serves on the Quest Academy's Governing Body. No other conflicts of interest were disclosed.

Director Canavero started by explaining to the Authority that no charter school may acquire real property without the approval of the school's sponsor. Nevada Revised Statues also requires that a Security Interest in the purchased property be assigned to the state. Director Canavero sent a letter to Quest Academy detailing what they would need to present to the Authority to fulfill NRS requirements. The school's response was submitted with the SPCSA Authority Support Document. President Conaboy asked members representing Quest Academy to come and present to the Authority.

Connie Jordan, Robin Vitiello, Katie Brase, Lucretia Glidewell, and Curt Carlson spoke on behalf of Quest Academy. Ms. Jordan gave the Authority background information on Quest Academy and details that led the school to decide to purchase new property.

Mr. Irvin suggested to Quest Academy that they are going before the Authority Authority for approval of the plan to acquire the real estate purchase, which includes the Security Interest. Mr. Irvin said he had some concerns with the Security Interest that had been turned in as required by SPCSA staff's letter to Quest Academy. He said he did not know what the Security Interest looked like. Mr. Irvin said that since he didn't know what the Security Interest looked like, and that was what the Authority Authority was going to approve, he recommended a conditional approval based on future documents.

Ms. Jordan asked her business managers on the team to help her explain the Security Interest to the Authority. Ms. Vitiello said that the Security Interest was new to them and difficult to understand. She said they had supplied the Statutory language to their attorney to incorporate into the contract with the seller.

Member McCord asked about the terminology that was used in the documents submitted by Quest Academy; specifically Junior Interest.

Ms. Vitiello explained that Junior Interest represented the Interest the State of Nevada had behind the bank as owners of the loan. Quest Academy's attorney was trying to clarify that it is not the Governing Body of the school that is a holder of the loan, but actually the bank and the State of Nevada.

Mr. Irvin said that the idea of Interest is not set in Nevada Revised Statutes. He continued to explain the history of the security interests and Nevada Revised Statutes with regard to the transference of property.

President Conaboy asked Mr. Irvin if Quest Academy's request was unprecedented. Mr. Irvin said yes, there is no case law that will help on the matter and NRS does not give the Authority statutory guidance. President Conaboy asked Mr. Irvin if the Authority should give a conditional approval so Quest Academy could move forward in obtaining proper documentation of the property transaction. Mr. Irvin said the Authority did not have to make the conditional approval today; however, it could be helpful if the decision was made. Discussion continued amongst the Authority and Quest Academy.

President Conaboy asked Director Canavero if SPCSA staff had a recommendation for how to proceed. Director Canavero said he believed this purchase would mean multiple visits by Quest Academy to the Authority. Director Canavero recommended the Authority approve the plan for the property acquisition, not necessarily all aspects of the plan, but with conditions Quest Academy must meet moving forward.

President Conaboy called for a motion for a conditional approval of the broad concept of Quest Academy purchasing property, with the conditions outlined by SPCSA staff which include; a detailed plan of purchase, a final definition of the security interest, a more refined budget, and the charter amendment.

Member Van moved to conditionally approve the Proposed Purchase of Real Property for Quest Academy. Vice President Wahl seconded. The motion carried unanimously, Member Abelman abstained.

Agenda Item 10 – Discussion and possible adoption of future meeting dates and future agenda items

President Conaboy said the Authority received a list of handouts outlining future meeting dates and times. Discussion was held between Director Canavero and the Authority about the future meeting dates. Mr. Irvin told President Conaboy that tentative approval of the schedule is always a possibility and the President of the Authority is allowed to change dates. No action was taken.

Agenda Item 9 – Discussion and possible approval of the written notice, pursuant to NRS 386.535(2), provided to Renaissance Academy of the State Public Charter School Authority's intention to revoke the charter

No conflicts of interest were disclosed before Director Canavero began his presentation.

Director Canavero began discussion with a brief history of the events that led to Renaissance Academy's proposed charter revocation. He said the Authority was voting today to send Renaissance Academy a written notice of intent to revoke the charter for the reasons that were identified in the deficiency notice. Director Canavero said this process is consistent with NRS 386.535(2).

Andrew Platt, Renaissance Governing Body President, and Gary Manning, interim administrator for Renaissance Academy spoke about the events that led to the revocation of Renaissance Academy's charter. Mr. Platt said they regret that they were in front of the Authority under these circumstances. Mr. Platt said on March 15th the governing Authority of Renaissance Academy met to acknowledge the school was financially impaired and the best interest of the kids was to not draw out the process. Renaissance Academy was in agreement with the SPCSA staff that revocation was the only option moving forward. Mr. Manning agreed that the best path forward was revocation of the charter.

Director Canavero said these events are never easy, but the SPCSA staff recognized, and appreciated, Renaissance Academy's cooperation. He said the school will have the option to voluntarily surrender their own charter, which would forego a revocation hearing in front of the Authority Authority. Director Canavero detailed what would happen once the Authority approved the notice of revocation.

Member McCord moved to issue written notice, pursuant to NRS 386.535(2), provided to Renaissance Academy of the State Public Charter School Authority's intention to revoke the charter. Member Luna seconded. The motion carried unanimously.

Agenda Item 10 – Discussion and possible adoption of future meeting dates and future agenda items

Member McCord suggested that leadership in the SPCSA staff be encouraged to initiate contact with the Governor's office and leadership of the Nevada Legislature regarding key issues such as, but not limited to; accountability, fiscal and capital considerations, oversight of the Authority, and the fidelity of the operation (with respect to the legislative intent). Member McCord asked that SPCSA staff immediately report back to the Authority of the nature of the initial discussions.

Agenda Item 11 – Public Comment

Edith Grub, Silver State High School, offered assistance to Quest Academy in their Real Property acquisition.

President Conaboy called for a motion for adjournment.

Member McCord made the motion for adjournment. Member Abelman seconded. The motion carried unanimously.

The meeting was adjourned at 5:35 p.m.

DRAFT

STATE PUBLIC CHARTER SCHOOL AUTHORITY

SUPPORTING DOCUMENT

S U B J E C T: Authority Update

/ /	Public Workshop
/ /	Public Hearing
/ /	Consent Agenda
/ /	Regulation Adoption
/ /	Approval
/ /	Appointments
/ x/	Information
/ /	Action

MEETING DATE: May 4, 2012

AGENDA ITEM: 3

NUMBER OF ENCLOSURE(S):

PRESENTER(S): Kathleen Conaboy, SPCSA Authority President

RECOMMENDATION:

FISCAL IMPACT:

BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):

LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES): 15 mins

BACKGROUND: President Conaboy will update the Authority with the latest news and events.

SUBMITTED BY: _____

STATE PUBLIC CHARTER SCHOOL AUTHORITY

SUPPORTING DOCUMENT

S U B J E C T: Director's Report

/ /	Public Workshop
/ /	Public Hearing
/ /	Consent Agenda
/ /	Regulation Adoption
/ /	Approval
/ /	Appointments
/ x/	Information
/ /	Action

MEETING DATE: May 4, 2012

AGENDA ITEM: 4

NUMBER OF ENCLOSURE(S):

PRESENTER(S): Steve Canavero, Director, State Public Charter School Authority

RECOMMENDATION:

FISCAL IMPACT:

BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):

LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES): 30 mins

BACKGROUND: Including but not limited to:

i. Discussion of Renaissance voluntarily closure/surrender of charter and appointment of trustee;
ii. Update on Title I;
iii. Process by which a charter school may transfer sponsorship; and
iv. Information concerning the purchase of real property by a charter school.

SUBMITTED BY: _____

Certificate of Resolution of the Governing Board of Renaissance Academy, a Nevada Public Charter School

Pursuant to NRS 386.549(4), the following resolutions were approved and adopted by the majority of the Governing Board of Renaissance Academy, at a duly noticed and convened meeting held April 24, 2012:

1. Whereas NRS 386.536 provides that the Governing Board shall appoint a Trustee to act during the process of the closure of a charter school and for one year after the date of closure.

2. Whereas NRS 365.536 further provides that no appointment of any Trustee may be effective unless the sponsor of a charter school shall approve such appointment.

3. Whereas Renaissance Academy (the "School") is not able to fulfill the purposes for which it was formed and has been cooperating with its sponsor, the State Public Charter School Authority, in terminating operations and preparing to wind up the affairs of the School.

4. Whereas the School endeavors to comply with the requirement that it appoint a qualified person to serve as Trustee but has been unsuccessful in locating a suitable candidate who would be able to serve without compensation.

5. Resolved that, after weighing the experience and qualifications of the candidates and acknowledging the Board's inability to completely predict all the responsibilities the Trustee will assume, the Board recommends the following candidates for approval by its sponsor with compensation commensurate with their qualifications in order of preference, and appoints such candidate as shall be so approved:

   a. Wesley Laughlin

   b. Andrew Platt

6. Resolved that immediately upon the approval by the sponsor of a nominated Trustee, that the School shall without further action by the Board surrender its Charter and that the Trustee shall thereupon be authorized and directed to close the School, wind up the affairs thereof, and fulfill the responsibilities of Trustee to the best of his/her capacity.

In witness whereof, the undersigned certifies that the foregoing is a true record of the recitals and resolutions approved and adopted by the Governing Board of Renaissance Academy on this matter and that said items are currently in full force and effect.

Dated this April 24, 2012

Andrew B. Platt, President

BRIAN SANDOVAL
Governor

STATE OF NEVADA

STEVE CANAVERO
Director

STATE PUBLIC CHARTER SCHOOL AUTHORITY

1749 North Stewart Street Suite 40
Carson City, Nevada 89706-2543
(775) 687 - 9174 · Fax: (775) 687 - 9113

April 26, 2012

Via Certified Mail
Return Receipt No. 70022030000584355949
and email to a@plattmosphere.com

Andrew Platt, President
Renaissance Academy Governing Body
984 Mackenzie Creek Avenue
Las Vegas, NV 89002

Re: Appointment of Trustee to Renaissance Academy

Dear Mr. Platt:

Thank you for your April 24, 2012, 2:05 PM, email to me including the Certificate of Resolution recommending Wesley Laughlin and Andrew Platt for approval by the State Public Charter School Authority (SPCSA), the school's sponsor, as the NRS 386.536 trustee for the closure of the Renaissance Academy public charter school. **The SPCSA hereby approves you, Andrew Platt, as the trustee,** and thanks you in advance for your continuing oversight of the orderly closure of the school.

In both your email and the Certificate of Resolution reference is made to compensation of the trustee for services to be rendered. Pursuant to NRS 386.536(4), financial compensation may, "to the extent practicable," be provided by the governing body or the sponsor to the trustee. Any payment made to the trustee by the sponsor would need to be reimbursed by the charter school; **the sponsor will provide no compensation to the trustee that will not be reimbursed by Renaissance Academy.** In other words, any compensation provided to the trustee must come from charter school funds, not from SPCSA funds.

Complicating the matter of compensation is the unclear status of the school's financial status. A number of finance-related school closure requirements have yet to be addressed by the school, resulting in a lack of communication by the school to the sponsor of its financial status. Please be reminded that NAC 386.335(1)(d), (f), (g), (h), (i) and (j), and (3)(b) all pertain to the school's financial status, would shed light on the school's financial status, and require action by the governing body and/or trustee. I'm aware of no action by the governing body toward

accomplishment of these requirements, and am therefore unaware of the school's financial status.

To be clear, my point is not necessarily that all closure requirements, including those indentified above from NAC 386.335, should have been met by now. My point is that, because the SPCSA has no clear knowledge of the school's financial status, it cannot guarantee payment to the trustee; **the SPCSA will not pay the trustee unless and until the SPCSA knows that the school has enough money to reimburse the SPCSA for payments made to the trustee** per NRS 386.536(4). Finally, please be advised that, should you as the trustee require assistance with the school's closure and need to pay someone for such assistance, the SPCSA would expect any person you engage for such assistance to precede you "in line" for payment from the school.

Thank you again for your cooperation; I look forward to working with you toward a successful closure of the Renaissance Academy. Don't hesitate to call or write with any questions.

Sincerely,

Steve Canavero, PhD
Director, State Public Charter School Authority

Change of Sponsorship

NRS 386.527 Approval of application; contents and term of written charter; request for change in sponsorship; term of written charter; request for amendment to written charter; issuance of written charter to applicant who is not prepared to commence operation.

4. The governing body of a charter school may request, at any time, a change in the sponsorship of the charter school to an entity that is authorized to sponsor charter schools pursuant to NRS 386.515. The State Board shall adopt:

(a) A process for a charter school that requests a change in the sponsorship of the charter school, which must not require the charter school to undergo all the requirements of an initial application to form a charter school; and

(b) Objective criteria for the conditions under which such a request may be granted.

NAC 386.323 Request for change in sponsorship of charter school. (NRS 385.080, 386.527)

1. Except as otherwise provided in subsection 2, the governing body of a charter school may request a change in the sponsorship of the charter school pursuant to NRS 386.527.

2. A request for a change in sponsorship may not be made if:

(a) The proposed sponsor is a school district other than the school district in which the charter school is located.

(b) The proposed sponsor is the State Board and the charter school will use facilities in more than one county.

3. A written request for a change in sponsorship must be submitted to the proposed sponsor and must include:

(a) A copy of the most recently approved application to form a charter school; and

(b) A copy of the written agreement with the current sponsor.

4. A request for a change in sponsorship must be considered by the proposed sponsor at a public meeting not later than 60 days after receipt of the request.

5. A proposed sponsor may approve a request for a change in sponsorship if:

(a) The school is in sound financial condition as determined by the most recent annual audit required by NAC 387.775;

(b) The school is on the list of schools that are designated as demonstrating exemplary achievement, demonstrating high achievement or demonstrating adequate achievement, which is maintained by the Department, on the date on which the request is submitted through the period when the request is considered by the proposed sponsor at a public meeting;

(c) The school's most recent report of compliance required by NAC 386.410 does not indicate a noncompliant item; and

(d) The school agrees to sign a new written agreement with the new sponsor. The written agreement may differ from the written agreement which the charter school signed with the current sponsor.

6. At the time a request for a change in sponsorship is submitted to the proposed sponsor, the governing body of a charter school shall submit a copy of the request to the current sponsor of the charter school.

(Added to NAC by Bd. of Education by R188-05, eff. 2-23-2006; A by R135-07, 4-17-2008; R026-09, 10-27-2009)

STATE PUBLIC CHARTER SCHOOL AUTHORITY

SUPPORTING DOCUMENT

S U B J E C T: Update from Governor Sandoval's Office

/ /	Public Workshop
/ /	Public Hearing
/ /	Consent Agenda
/ /	Regulation Adoption
/ /	Approval
/ /	Appointments
/ x/	Information
/ /	Action

MEETING DATE: May 4, 2012

AGENDA ITEM: 5

NUMBER OF ENCLOSURE(S):

PRESENTER(S): Dale Erquiaga, Senior Advisor to the Governor.

RECOMMENDATION:

FISCAL IMPACT:

BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):

LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES): 30 mins

BACKGROUND:

SUBMITTED BY: _____

STATE PUBLIC CHARTER SCHOOL AUTHORITY

SUPPORTING DOCUMENT

S U B J E C T: Report concerning the nature and content of initial discussions with stakeholders regarding key issues for legislative consideration. Possible action may include the development of a prioritized list of legislative issues to pursue at the 2013 Legislative session.

/ /	Public Workshop
/ /	Public Hearing
/ /	Consent Agenda
/ /	Regulation Adoption
/ /	Approval
/ /	Appointments
/ x/	Information
/x /	Action

MEETING DATE: May 4, 2012
AGENDA ITEM: 6
NUMBER OF ENCLOSURE(S):

PRESENTER(S): Steve Canavero, Director State Public Charter School Authority.

RECOMMENDATION: Develop a prioritized list of legislative issues to pursue at the 2013 Legislative session

FISCAL IMPACT:

BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):

LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES): 120 mins

BACKGROUND:

- Key issues include, but are not limited to:
  - i. Enrollment procedures: Lottery (NRS 386.580)
  - ii. Equitable Access to Capital Funding and Facilitates;
  - iii. Definition of an Educational Management Organization (NRS 386.562(2));
  - iv. Funding the Charter School Revolving Loan Account (NRS 386.576-578);
  - v. Status of the Authority;
  - vi. Special Education Burden of Proof; and
  - vii. Redefining the Charter: Performance-Based Charter Contracts.

SUBMITTED BY: _____

Background

Timeline

March 23 - Meeting of the Authority - staff and the chair of the Authority begin discussions and engage stakeholders in discussion around the upcoming legislative session and charter schools.

March 30 - April 6 – Authority schools and sponsors of charter schools submit ideas

April 6 – Phone conference discussion

April 23 – Meeting (Las Vegas) with schools and CCSD

April 26 – Meeting (Reno/Carson) with schools

April 27 – Finalize list of topics for Authority Support Docs

NAPCS Recommendations

1) Increase operational autonomy
2) Ensure equitable operational funding
3) Equitable access to capital funding and facilities

Recommended Prioritized List

The following list includes items suggested or otherwise discussed by stakeholder groups and prioritized by Authority staff. The prioritization of items is a recommendation based on interest and discussion with stakeholders.

1) Enrollment Lottery
    a. Extend existing exemptions to all charters not at-risk only.
        i. Current law (at-risk only)
            1. Sibling
            2. Pre-K program
            3. Child of person employed full-time by the charter school
            4. Particular category of at-risk

5. Distance of residence

b. New language – may include refining language above

i. ADD - Child of founders (committee to form) and board members

1. USED Non-Regulatory Guidance as model

2) Add new components of strong public charter school law to advance authorizer process

a. Performance-Based Charter Contracts

i. Monitoring Plan

1. Pre-Opening Plan

2. Performance Frameworks – Academic, Operational, and Fiscal

a. Multidimensional

b. Objective

ii. Clear Processes for Renewal, Nonrenewal, and Revocation

iii. Operations and Autonomy

1. Increase operational autonomy

2. Clear progressive intervention protocols

b. Transparent Application, Review, and Decision-Making process

i. Minor revisions to incorporate model law

*Reduce redundancy in law; create one system of best practices applicable to all sponsors

3) Authority status and regulatory power

a. Promulgate regulation in the area of charter schools (NAC 386.010 – NAC 386.445)

b. Authority funding – appropriation to support statewide/regulatory work

c. Process for districts to "transfer" their chartering authority to the Authority

i. Formal rather than de facto

4) Equitable access to capital and facilities

a. Allow for access to low cost capital for facilities

i. State conduit for bonding

ii. Individual school liability

iii. Models to consider: Colorado, Utah

b. Consider other incentives (such as property tax incentives) for developers/property owners to lease or build for charter school use.

5) Special education burden of proof
   a. Costs to schools
   b. Conceptual – recommended language will be developed if necessary
6) Educational Management Organization (EMO) definition
   a. Revisions to the definition of an EMO
      i. Option 1 – minor clean-up of existing statute (e.g., add "educational" before personnel to the last sentence of NRS 386.562 (2)).
      ii. Option 2 – clearly define an EMO building off national models used to define these entities
7) Revolving Loan Account – low cost loans for start-up and operational exceptions
   a. Support the inclusion of an "Item for Special Consideration" at time of budget submission
   b. Revise language to allow strong charter schools to meet cash flow shortages
   c. Request $750,000 to seed account
8) Multicounty charter schools
   a. Revise NRS to allow for the formation of charter schools (physical) in more than one county
      i. Granting a statewide charter – does not apply to programs of distance education

Items suggested by stakeholder that are not recommended to pursue at this time

1) Annual Performance Audit exemption up to 5 yrs from 3 yrs
   a. Pursue if Performance-Based Contract/Monitoring is not pursued
2) Teacher Flexibility
   a. No consensus to pursue at this time
3) Directory Language – incorporate FERPA language into NRS
   a. Feedback has been to not include FERPA language into NRS

4) Charter schools and legislative intent
    a. Engage a third party to study the operation and effectiveness of NV charter schools consistent with legislative intent
        i. Perhaps in the interim
5) Charter school administrators
    a. Required to hold an administrative endorsement
        i. Consensus that all charter administrators have the necessary capacity to operate a quality schools

NRS 386.580 Application for admission; determination of enrollment; discrimination prohibited; exception for charter school that provides education for certain pupils; participation in class or extracurricular activity by pupil enrolled in another school or homeschooled child.

1. An application for enrollment in a charter school may be submitted to the governing body of the charter school by the parent or legal guardian of any child who resides in this State. Except as otherwise provided in this subsection and subsection 2, a charter school shall enroll pupils who are eligible for enrollment in the order in which the applications are received. If the board of trustees of the school district in which the charter school is located has established zones of attendance pursuant to NRS 388.040, the charter school shall, if practicable, ensure that the racial composition of pupils enrolled in the charter school does not differ by more than 10 percent from the racial composition of pupils who attend public schools in the zone in which the charter school is located. If a charter school is sponsored by the board of trustees of a school district located in a county whose population is 100,000 or more, except for a program of distance education provided by the charter school, the charter school shall enroll pupils who are eligible for enrollment who reside in the school district in which the charter school is located before enrolling pupils who reside outside the school district. Except as otherwise provided in subsection 2, if more pupils who are eligible for enrollment apply for enrollment in the charter school than the number of spaces which are available, the charter school shall determine which applicants to enroll pursuant to this subsection on the basis of a lottery system.

2. Before a charter school enrolls pupils who are eligible for enrollment, a charter school that is dedicated to providing educational programs and opportunities to pupils who are at risk may enroll a child who:

(a) Is a sibling of a pupil who is currently enrolled in the charter school;

(b) Was enrolled, on the basis of a lottery system, in a prekindergarten program at the charter school or any other early childhood educational program affiliated with the charter school;

(c) Is a child of a person employed in a full-time position by the charter school;

(d) Is in a particular category of at-risk pupils and the child meets the eligibility for enrollment prescribed by the charter school for that particular category; or

(e) Resides within the school district and within 2 miles of the charter school if the charter school is located in an area that the sponsor of the charter school determines includes a high percentage of children who are at risk. If space is available after the charter school enrolls pupils pursuant to this paragraph, the charter school may enroll children who reside outside the school district but within 2 miles of the charter school if the charter school is located within an area that the sponsor determines includes a high percentage of children who are at risk.

➥ If more pupils described in this subsection who are eligible apply for enrollment than the number of spaces available, the charter school shall determine which applicants to enroll pursuant to this subsection on the basis of a lottery system.

3. Except as otherwise provided in subsection 8, a charter school shall not accept applications for enrollment in the charter school or otherwise discriminate based on the:

(a) Race;

(b) Gender;

(c) Religion;

(d) Ethnicity; or

(e) Disability,

➥ of a pupil.

4. If the governing body of a charter school determines that the charter school is unable to provide an appropriate special education program and related services for a particular disability of a pupil who is enrolled in the charter school, the governing body may request that the board of trustees of the school district of the county in which the pupil resides transfer that pupil to an appropriate school.

5. Except as otherwise provided in this subsection, upon the request of a parent or legal guardian of a child who is enrolled in a public school of a school district or a private school, or a parent or legal guardian of a homeschooled child, the governing body of the charter school shall authorize the child to participate in a class that is not otherwise available to the child at his or her school or homeschool or participate in an extracurricular activity at the charter school if:

(a) Space for the child in the class or extracurricular activity is available;

(b) The parent or legal guardian demonstrates to the satisfaction of the governing body that the child is qualified to participate in the class or extracurricular activity; and

(c) The child is a homeschooled child and a notice of intent of a homeschooled child to participate in programs and activities is filed for the child with the school district in which the child resides for the current school year pursuant to NRS 392.705.

➥ If the governing body of a charter school authorizes a child to participate in a class or extracurricular activity pursuant to this subsection, the governing body is not required to provide transportation for the child to attend the class or activity. A charter school shall not authorize such a child to participate in a class or activity through a program of distance education provided by the charter school pursuant to NRS 388.820 to 388.874, inclusive.

6. The governing body of a charter school may revoke its approval for a child to participate in a class or extracurricular activity at a charter school pursuant to subsection 5 if the governing body determines that the child has failed to comply with applicable statutes, or applicable rules and regulations. If the governing body so revokes its approval, neither the governing body nor the charter school is liable for any damages relating to the denial of services to the child.

7. The governing body of a charter school may, before authorizing a homeschooled child to participate in a class or extracurricular activity pursuant to subsection 5, require proof of the identity of the child, including, without limitation, the birth certificate of the child or other documentation sufficient to establish the identity of the child.

8. This section does not preclude the formation of a charter school that is dedicated to provide educational services exclusively to pupils:

(a) With disabilities;

(b) Who pose such severe disciplinary problems that they warrant a specific educational program, including, without limitation, a charter school specifically designed to serve a single gender that emphasizes personal responsibility and rehabilitation; or

(c) Who are at risk.

➥ If more eligible pupils apply for enrollment in such a charter school than the number of spaces which are available, the charter school shall determine which applicants to enroll pursuant to this subsection on the basis of a lottery system.

(Added to NRS by 1997, 1850; A 1999, 3301; 2001, 3135; 2003, 2960; 2005, 1537, 1664, 2404, 2540; 2007, 3029; 2009, 261, 580

Charter Schools Program

Title V, Part B of the ESEA

Nonregulatory Guidance

April, 2011

equipment must be necessary and reasonable for the proper and efficient performance and administration of the grant. In addition, the cost of the equipment must be included in the approved application and budget for the grant. Equipment necessary to implement a charter school may include, but is not necessarily limited to, desks, chairs, computers, equipment related to physical education and art, and playground equipment. 20 U.S.C. 7221c(f)(3)(B)(ii); OMB Circular A-122.

E. Lottery, Recruitment, and Admissions

E-1. What is a lottery for purposes of the CSP?

A lottery is a random selection process by which applicants are admitted to the charter school. 20 U.S.C. 7221i(1)(H).

E-2. Under what circumstances must a charter school use a lottery?

A charter school receiving CSP funds must use a lottery if more students apply for admission to the charter school than can be admitted. A charter school with fewer applicants than spaces available does not need to conduct a lottery. 20 U.S.C. 7221i(1)(H).

E-3. Are weighted lotteries permissible?

Weighted lotteries (lotteries that give preference to one set of students over another) are permitted only when they are necessary to comply with title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the equal protection clause of the Constitution, or applicable State law.

In addition, a charter school may weight its lottery in favor of students seeking to change schools under the public school choice provisions of title I, part A of the ESEA for the limited purpose of providing greater choice to students covered by those provisions. For example, a charter school could provide each student seeking a transfer under title I with two or more chances to win the lottery, while all other students would have only one chance to win. 20 U.S.C. 7221i(1)(H).

E-4. May a charter school exempt certain categories of applicants from the lottery and admit them automatically?

A charter school that is oversubscribed and, consequently, must use a lottery, generally must include in that lottery all eligible applicants for admission. A charter school may exempt from the lottery only those students who are deemed to have been admitted to the charter school already and, therefore, do not need to reapply.

Specifically, the following categories of applicants may be exempted from the lottery on this basis:

a) Students who are enrolled in a public school at the time it is converted into a public charter school;

b) Students who are eligible to attend, and are living in the attendance area of, a public school at the time it is converted into a public charter school;

c) Siblings of students already admitted to or attending the same charter school;

d) Children of a charter school's founders, teachers, and staff (so long as the total number of students allowed under this exemption constitutes only a small percentage of the school's total enrollment); and

e) Children of employees in a work-site charter school, (so long as the total number of students allowed under this exemption constitutes only a small percentage of the school's total enrollment).

When recruiting students, charter schools should target all segments of the parent community. A charter school must recruit in a manner that does not discriminate against students of a particular race, color, national origin (including English language learners), religion, or sex, or against students with disabilities; in order to meet this goal, charter schools should consider additional recruitment efforts toward groups that might otherwise have limited opportunities to participate in the charter school's programs. Once a student has been admitted to the charter school through an appropriate process, he or she may remain in attendance through subsequent grades. A new applicant for admission to the charter school, however, would be subject to the lottery if, as of the application closing date, the total number of applicants exceeds the number of spaces available at the charter school. 20 U.S.C. 7221b(b)(3)(I) and 7221i(1)(E), (G), and (H).

E-5. May a charter school create separate lottery pools for girls and boys, in order to ensure that it has a reasonably equal gender balance?

No, a charter school receiving CSP funds must hold one lottery that provides qualified students with an equal opportunity to attend the school. Therefore, a charter school receiving funds under the program is precluded from holding separate lotteries for boys and girls. Nor may a school weight its lottery in favor of one gender over another. A school seeking to increase participation of one gender should do so by targeting additional recruitment efforts toward that gender. 20 U.S.C. 7221b(b)(3)(I) and 7221i(1)(H).

E-6. In addition to title V, part B, subpart 1 of the ESEA, what other statutory or regulatory authorities should a charter school receiving a CSP grant consider when developing its admissions policies?

To be eligible for CSP start-up grants, a charter school's admissions practices must comply with applicable Federal and State laws. Exemptions from the lottery specified in E-4 above are permissible only to the extent that they are consistent with the State's charter school law, other applicable State laws, the school's charter, and any applicable title VI desegregation plans or court orders requiring desegregation. A charter school's admissions practices must also comply with part B of the Individuals with Disabilities Education Act and Federal civil rights laws, including, but not limited to, title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973; and title II of the Americans with Disabilities Act of 1990, as applicable. 20 U.S.C. 7221i(1)(E), (G), (H), and (K). See also A-3.

E-7. What are a charter school's responsibilities with regard to outreach and recruitment?

Section 5203(b)(3)(I) of the ESEA requires charter school grant and subgrant recipients to inform students in the community about the charter school and to give each student "an equal opportunity to attend the charter school". Further, section 5203(b)(3)(E) of the ESEA requires charter schools receiving CSP grants or subgrants to involve parents and other members of the community in the planning, program design, and implementation of the charter school.

As noted in E-4 above, charter schools may not discriminate in recruiting. Charter schools should reach out broadly to the community, including to English language learners and students with disabilities.

E-8. May a tuition-based private preschool program that "feeds into" an elementary public charter school at the kindergarten level permit children enrolled in the preschool program to continue in the elementary program without going through a lottery process?

No. In order to qualify for funds under the CSP, a "charter school" must, in addition to meeting other requirements, be created as a public school and may not charge tuition. Therefore, the private preschool would not qualify as a charter school and would have to be operated separately from the elementary "charter school". Accordingly, all applicants to the charter school, including students attending the private preschool, would have to be selected by lottery if there are more applicants than there are spaces available. See also B-10.

However, the statute does not preclude an elementary charter school in this type of situation from holding its lottery a few years early (e.g., when students are ready to enroll in the preschool). Under this approach, the charter school would have an affirmative responsibility to inform prospective applicants that winning the lottery does not require them to enroll in the private preschool. Thus, any child selected through the lottery would be guaranteed a slot in

kindergarten a few years later, whether or not he or she enrolls in the preschool program.

Additionally, given the high mobility of children and families, schools that choose to exercise this option should ensure that families in the area, including those new to the area or that were not aware of the previous lottery are given the opportunity to apply for admission. Such admissions policies must meet the requirements of the CSP and might include holding a second lottery to fill vacancies created by normal attrition or the failure of early lottery winners to enroll in the charter school. 20 U.S.C. 7221b(b)(3)(E) and (b)(3)(I); and 7221i(1)(F) and (1)(H).

F. Involvement of Religious and Community-Based Organizations with Charter Schools

F-1. May a charter school be religious in nature?

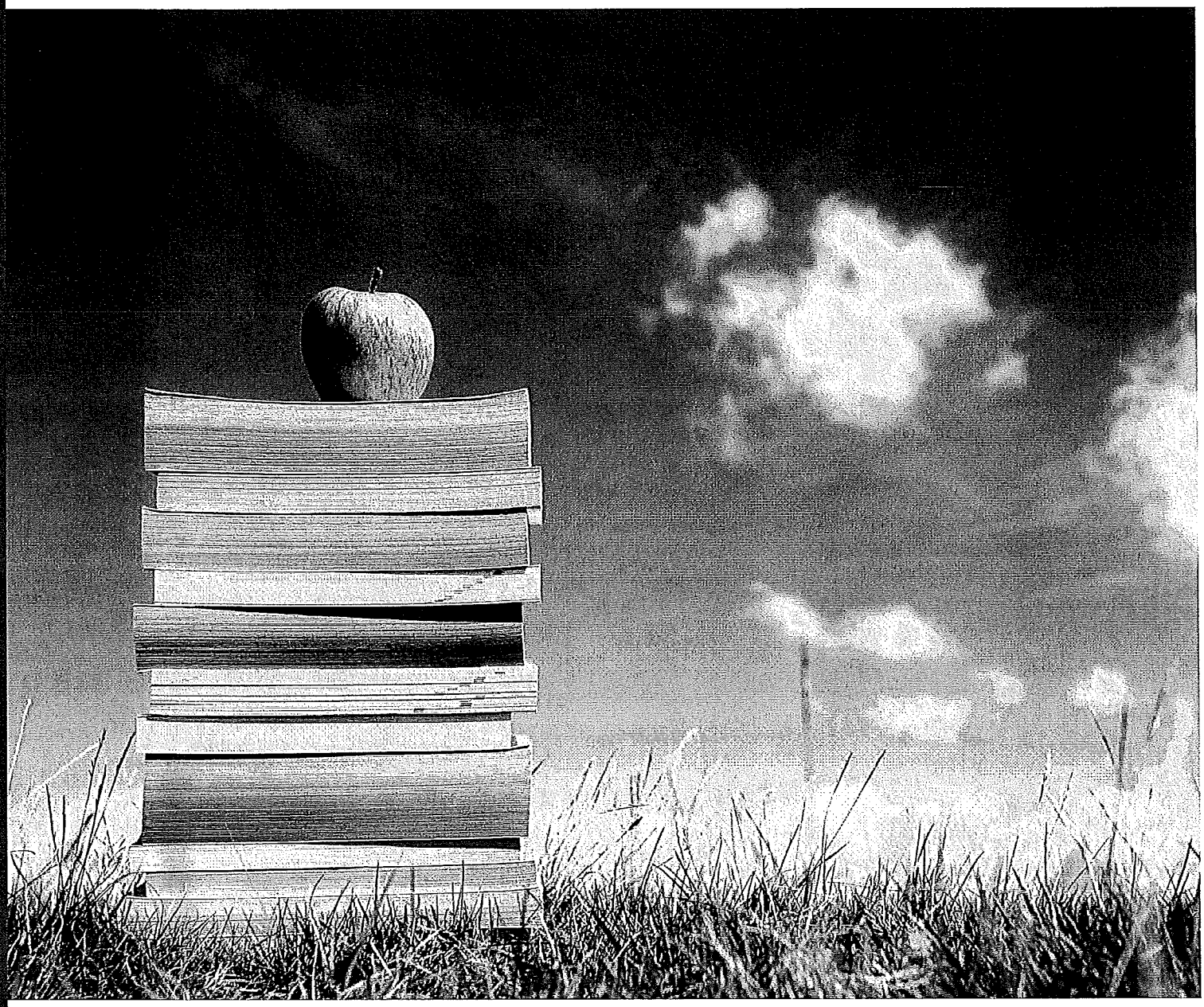
No. As public schools, charter schools must be non-religious in their programs, admissions policies, governance, employment practices and all other operations, and the charter school's curriculum must be completely secular. As with other public schools, charter schools may not provide religious instruction but may teach about religion from a secular perspective and play an active role in teaching civic values. Further, as discussed later in this document, faith-based and religious organizations can be involved with charter schools in many ways, and religious expression by students is allowed in charter schools to the same extent as in other public schools. 20 U.S.C. 7221i(1)(E).

F-2. May charter schools use public funds to support religious programs or activities?

No. All activities of a charter school must be non-religious, as is the case for all public schools. Public funds may not be used for religious purposes or to encourage religious activity. In addition, even if funded by non-public sources, religious activity may not be conducted, promoted, or encouraged during charter school activities by charter school employees or by other persons working with charter schools. 20 U.S.C. 7221i(1)(E). See also F-1.

F-3. May charter schools enter into partnerships with religious organizations to provide secular services?

Yes. Like other public schools, charter schools may enter into partnerships with community groups for secular purposes, such as tutoring or recreational activities. Religious groups may be partners for these types of activities, so long as charter schools select partners without regard to their religious affiliation, ensure that no public funds are used for religious purposes, do not engage in or encourage religious activity, and the partner organization does not engage in or encourage religious activity as part of the partnership activities.



A New Model Law For Supporting The Growth Of High-Quality Public Charter Schools

June 2009

National Alliance for Public Charter Schools

ESSENTIAL COMPONENTS OF A STRONG PUBLIC CHARTER SCHOOL LAW[3]

As a quick guide to the primary ingredients of a strong public charter school law, we developed the following list of the essential components of such a law.

1) No Caps, on the growth of public charter schools in a state.[4]

2) A Variety of Public Charter Schools Allowed, including new start-ups, public school conversions, and virtual schools.

3) Multiple Authorizers Available, including non-local school board authorizers, to which charter applicants may directly apply.

4) Authorizer Accountability System Required, whereby all authorizers must affirm interest to become an authorizer (except for a legislatively-created state public charter school commission) and participate in an authorizer reporting program based on objective data, as overseen by some state-level entity with the power to remedy.

5) Adequate Authorizer Funding, including provisions for guaranteed funding from authorizer fees, and public accountability for such expenditures.

6) Transparent Charter Application, Review, and Decision-making Processes, including comprehensive academic, operational, governance, and performance application requirements, with such applications reviewed and acted upon following professional authorizer standards.

7) Comprehensive Public Charter School Monitoring and Data Collection Processes, so that all authorizers can verify public charter school compliance with applicable law and their performance-based contracts.

8) Clear Processes for Renewal, Nonrenewal, and Revocation Decisions, including school closure and dissolution procedures to be used by all authorizers.

9) Performance-Based Charter Contracts Required, with such contracts created as separate post-application documents between authorizers and public charter schools detailing at least academic performance expectations, operational performance expectations, and school and authorizer rights and duties.

10) Fiscally and Legally Autonomous Schools, with Independent Public Charter School Boards, whereby public charter schools are created as autonomous entities with their boards having most powers granted to other traditional public school district boards.

11) Clear Student Recruitment, Enrollment and Lottery Procedures, which must be followed by all public charter schools.

12) Automatic Exemptions from Many State Laws, except for those covering health, safety, civil rights, student accountability, employee criminal history checks, open meetings, freedom of information requirements, and generally accepted accounting principles.

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3 These essential components of a strong public charter school law were created by Louann Bierlein Palmer, Associate Professor at Western Michigan University. Palmer also developed the original list of essential components of a strong public charter school law while she was at the Morrison Institute at Arizona State University during the early 1990s.

4 The ideal state policy does not contain caps on the growth of public charter schools. While not ideal, some states have created "soft caps" that statutorily allow for annual charter growth sufficient to meet demand, which are preferable to "hard caps" on the total number of charters allowed in a state. As examples of "soft caps," California allows for 100 new public charter schools a year and D.C. allows for 20 new public charter schools a year.

13) Automatic Collective Bargaining Exemption, whereby public charter schools are exempt from any outside collective bargaining agreements, while not interfering with laws and other applicable rules protecting the rights of employees to organize and be free from discrimination.

14) Educational Service Providers Allowed, provided there is a clear performance contract between the independent public charter school board and the service provider and there are no conflicts of interest between the two entities.

15) Multi-School Charter Contracts and Multi-Charter Contract Boards Allowed, whereby an independent public charter school board may oversee multiple schools linked under a single charter contract or may hold multiple charter contracts.

16) Extra-Curricular and Interscholastic Activities Eligibility and Access, where: (a) public charter school students and employees are eligible for state- and district-sponsored interscholastic leagues, competitions, awards, scholarships, and recognition programs to the same extent as traditional public school students and employees; and (b) students at charters that do not provide extra-curricular and interscholastic activities have access to those activities at traditional public schools for a fee via a mutual agreement.

17) Clear Identification of Special Education Responsibilities, including clarity on which entity is the local education agency (LEA) responsible for such services and how such services are to be funded (especially for low-incident, high cost cases).

18) Equitable Operational Funding and Equal Access to All State and Federal Categorical Funding, flowing to the school in a timely fashion and in the same amount as district schools following eligibility criteria similar to all other public schools.

19) Equitable Access to Capital Funding and Facilities, including multiple provisions such as: a per-pupil facility allowance (equal to statewide average per-pupil capital costs); facility grant and revolving loan programs; a charter school bonding authority (or access to all relevant state tax-exempt bonding authorities available to all other public schools); the right of first refusal to purchase or lease at or below fair market value a closed or unused public school facility or property; and clarity that no state or local entity may impose any facility-related requirements that are stricter than those applied to traditional public schools.

20) Access to Relevant Employee Retirement Systems, with the option to participate in a similar manner to all other public schools.

> The time is right for a new model law that supports more and better public charter schools based upon lessons learned from experience, research, and analysis.

An approved charter application shall not serve as the school's charter contract.

(4) Initial Charter Term

(a) An initial charter shall be granted for a term of five operating years. The charter term shall commence on the public charter school's first day of operation. An approved public charter school may delay its opening for one school year in order to plan and prepare for the school's opening. If the school requires an opening delay of more than one school year, the school must request an extension from its authorizer. The authorizer may grant or deny the extension depending on the particular school's circumstances.

(5) Charter Contracts

(a) Within [INSERT NUMBER OF DAYS] of approval of a charter application, the authorizer and the governing board of the approved public charter school shall execute a charter contract that clearly sets forth the academic and operational performance expectations and measures by which the public charter school will be judged and the administrative relationship between the authorizer and public charter school, including each party's rights and duties. The performance expectations and measures set forth in the charter contract shall include but need not be limited to applicable federal and state accountability requirements. The performance provisions may be refined or amended by mutual agreement after the public charter school is operating and has collected baseline achievement data for its enrolled students.

(b) The charter contract for a virtual public charter school shall include description and agreement regarding the methods by which the school will:

(i) Monitor and verify full-time student enrollment, student participation in a full course load, credit accrual, and course completion;

(ii) Monitor and verify student progress and performance in each course through regular, proctored assessments and submissions of coursework;

(iii) Conduct parent-teacher conferences; and

(iv) Administer state-required assessments to all students in a proctored setting.

(c) The charter contract shall be signed by the president of the authorizer's governing board and the president of the public charter school's governing body. Within [INSERT NUMBER OF DAYS] of executing a charter contract, the authorizer shall submit to the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] written notification of the charter contract execution, including a copy of the executed charter contract and any attachments.

(d) No public charter school may commence operations without a charter contract executed in accordance with this provision and approved in an open meeting of the authorizer's governing board.

(5) Pre-Opening Requirements or Conditions

(a) Authorizers may establish reasonable pre-opening requirements or conditions to monitor the start-up progress of newly approved public charter schools and ensure that they are prepared to open smoothly on the date agreed, and to ensure that each school meets all building, health, safety, insurance, and other legal requirements for school opening.

VII. Accountability

(1) Performance Framework

(a) The performance provisions within the charter contract shall be based on a performance framework that clearly sets forth the academic and operational performance indicators, measures and metrics that will guide the authorizer's evaluations of each public charter school. The performance

framework shall include indicators, measures and metrics for, at a minimum:

(i) Student academic proficiency;
(ii) Student academic growth;
(iii) Achievement gaps in both proficiency and growth between major student subgroups;
(iv) Attendance;
(v) Recurrent enrollment from year to year;
(vi) Postsecondary readiness (for high schools);
(vii) Financial performance and sustainability; and
(viii) Board performance and stewardship, including compliance with all applicable laws, regulations, and terms of the charter contract.

(b) Annual performance targets shall be set by each public charter school in conjunction with its authorizer, and shall be designed to help each school meet applicable federal, state, and authorizer expectations.
(c) The performance framework shall allow the inclusion of additional rigorous, valid, and reliable indicators proposed by a public charter school to augment external evaluations of its performance, provided that the authorizer approves the quality and rigor of such school-proposed indicators, and they are consistent with the purposes of this Act.
(d) The performance framework shall require the disaggregation of all student performance data by major student subgroups (gender, race, poverty status, special education status, English Learner status, and gifted status).
(e) For each public charter school it oversees, the authorizer shall be responsible for collecting, analyzing, and reporting all data from state assessments in accordance with the performance framework.
(f) Multiple schools operating under a single charter contract or overseen by a single governing board shall be required to report their performance as separate, individual schools, and each school shall be held independently accountable for its performance.

(2) Ongoing Oversight and Corrective Actions
(a) An authorizer shall continually monitor the performance and legal compliance of the public charter schools it oversees, including collecting and analyzing data to support ongoing evaluation according to the charter contract. Every authorizer shall have the authority to conduct or require oversight activities that enable the authorizer to fulfill its responsibilities under this Act, including conducting appropriate inquiries and investigations, so long as those activities are consistent with the intent of this Act, adhere to the terms of the charter contract, and do not unduly inhibit the autonomy granted to public charter schools.
(b) Each authorizer shall annually publish and provide, as part of its annual report to the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] and the general assembly, a performance report for each public charter school it oversees, in accordance with the performance framework set forth in the charter contract and Section V, (7) of this Act. The authorizer may require each public charter school it oversees to submit an annual report to assist the authorizer in gathering complete information about each school, consistent with the performance framework.
(c) In the event that a public charter school's performance or legal compliance appears unsatisfactory, the authorizer shall promptly notify the public charter school of the perceived problem and provide reasonable opportunity for the school to remedy the problem, unless the problem warrants revocation in which case the revocation timeframes will apply.
(d) Every authorizer shall have the authority to take appropriate corrective actions or exercise sanctions short of revocation in response to apparent deficiencies in public charter school performance or legal compliance. Such actions or sanctions may

include, if warranted, requiring a school to develop and execute a corrective action plan within a specified timeframe.

(3) Renewals, Revocations, and Non-renewals

(a) A charter may be renewed for successive five-year terms of duration, although the authorizer may vary the term based on the performance, demonstrated capacities, and particular circumstances of each public charter school. An authorizer may grant renewal with specific conditions for necessary improvements to a public charter school.

(b) No later than [INSERT DATE], the authorizer shall issue a public charter school performance report and charter renewal application guidance to any public charter school whose charter will expire the following year. The performance report shall summarize the public charter school's performance record to date, based on the data required by this Act and the charter contract, and shall provide notice of any weaknesses or concerns perceived by the authorizer concerning the public charter school that may jeopardize its position in seeking renewal if not timely rectified. The public charter school shall have [INSERT NUMBER OF DAYS] to respond to the performance report and submit any corrections or clarifications for the report.

(c) The renewal application guidance shall, at a minimum, provide an opportunity for the public charter school to:

(i) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal;

(ii) Describe improvements undertaken or planned for the school; and

(iii) Detail the school's plans for the next charter term.

(d) The renewal application guidance shall include or refer explicitly to the criteria that will guide the authorizer's renewal decisions, which shall be based on the performance framework set forth in the charter contract and consistent with this Act.

(e) No later than [INSERT DATE], the governing board of a public charter school seeking renewal shall submit a renewal application to the charter authorizer pursuant to the renewal application guidance issued by the authorizer. The authorizer shall rule by resolution on the renewal application no later than [INSERT NUMBER OF DAYS] after the filing of the renewal application.

(f) In making charter renewal decisions, every authorizer shall:

(i) Ground its decisions in evidence of the school's performance over the term of the charter contract in accordance with the performance framework set forth in the charter contract;

(ii) Ensure that data used in making renewal decisions are available to the school and the public; and

(iii) Provide a public report summarizing the evidence basis for each decision.

(g) A charter contract may be revoked at any time or not renewed if the authorizer determines that the public charter school did any of the following or otherwise failed to comply with the provisions of this Act:

(i) Commits a material and substantial violation of any of the terms, conditions, standards, or procedures required under this Act or the charter contract;

(ii) Fails to meet or make sufficient progress toward the performance expectations set forth in the charter contract;

iii) Fails to meet generally accepted standards of fiscal management; or

(iv) Substantially violates any material provision of law from which the public charter school was not exempted.

(h) An authorizer must develop revocation and non-renewal processes that:

(i) Provide the charter holders with a timely notification of the prospect of revocation or non-renewal and of the reasons for such possible closure;
(ii) Allow the charter holders a reasonable amount of time in which to prepare a response;
(iii) Provide the charter holders with an opportunity to submit documents and give testimony challenging the rationale for closure and in support of the continuation of the school at an orderly proceeding held for that purpose;
(iv) Allow the charter holders access to representation by counsel and to call witnesses on their behalf;
(v) Permit the recording of such proceedings; and
(vi) After a reasonable period for deliberation, require a final determination be made and conveyed in writing to the charter holders.

(i) If an authorizer revokes or does not renew a charter, the authorizer shall clearly state, in a resolution of its governing board, the reasons for the revocation or nonrenewal.

(j) Within [INSERT NUMBER OF DAYS] of taking action to renew, not renew, or revoke a charter, the authorizer shall report to the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] the action taken, and shall provide a copy of the report to the public charter school at the same time that the report is submitted to the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY]. The report shall include a copy of the authorizer governing board's resolution setting forth the action taken and reasons for the decision and assurances as to compliance with all of the requirements set forth in this Act.

(4) School Closure and Dissolution
(a) Prior to any public charter school closure decision, an authorizer shall have developed a public charter school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, and proper disposition of school funds, property, and assets in accordance with the requirements of this Act. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the school and the authorizer. In the event of a public charter school closure for any reason, the authorizer shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents, as guided by the closure protocol.
(b) In the event of a public charter school closure for any reason, the assets of the school shall be distributed first to satisfy outstanding payroll obligations for employees of the school, then to creditors of the school, and then to the state treasury to the credit of the general revenue fund. If the assets of the school are insufficient to pay all parties to whom the school owes compensation, the prioritization of the distribution of assets may be determined by decree of a court of law.

(5) Charter Transfers
(a) Transfer of a charter contract, and of oversight of that public charter school, from one authorizer to another before the expiration of the charter term shall not be permitted except by special petition to the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] by a public charter school or its authorizer. The [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] shall review such petitions on a case-by-case basis and may grant transfer requests in response to special circumstances and evidence that such a transfer would serve the best interests of the public charter school's students.

(6) Annual Report

(a) On or before [INSERT DATE] of each year beginning in the first year after the state will have had public charter schools operating for a full school year, the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] shall issue to the governor, the general assembly, and the public at large, an annual report on the state's public charter schools, drawing from the annual reports submitted by every authorizer as well as any additional relevant data compiled by the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY], for the school year ending in the preceding calendar year. The annual report shall include a comparison of the performance of public charter school students with the performance of academically, ethnically, and economically comparable groups of students in non-charter public schools. In addition, the annual report shall include the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY]'s assessment of the successes, challenges, and areas for improvement in meeting the purposes of this Act, including the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY]'s assessment of the sufficiency of funding for public charter schools, the efficacy of the state formula for authorizer funding, and any suggested changes in state law or policy necessary to strengthen the state's public charter schools.

VIII. Operations and Autonomy

(1) Legal Status of Public Charter School

(a) Notwithstanding any provision of law to the contrary, to the extent that any provision of this Act is inconsistent with any other state or local law, rule, or regulation, the provisions of this Act shall govern and be controlling.

(b) A public charter school shall be a non-profit education organization.

(c) A public charter school shall be subject to all federal laws and authorities enumerated herein or arranged by charter contract with the school's authorizer, where such contracting is consistent with applicable laws, rules, and regulations.

(d) Except as provided in this Act, a public charter school shall not be subject to the state's education statutes or any state or local rule, regulation, policy, or procedure relating to non-charter public schools within an applicable local school district regardless of whether such rule, regulation, policy, or procedure is established by the local school board, the state board of education, or the state department of education.

(e) A charter contract may consist of one or more schools, to the extent approved by the authorizer and consistent with applicable law. Each public charter school that is part of a charter contract shall be separate and distinct from any others.

(f) A single governing board may hold one or more charter contracts. Each public charter school that is part of a charter contract shall be separate and distinct from any others.

(2) Local Educational Agency Status *[The 41 jurisdictions with public charter school laws vary greatly in how they address the local educational agency (LEA) status of public charter schools. In this model law, we provide two options for handling this issue in state law.]*

OPTION 1: A PUBLIC CHARTER SCHOOL IS A LOCAL EDUCATIONAL AGENCY

(a) A public charter school shall function as a Local Educational Agency ("LEA"). A public charter school shall be responsible for meeting the requirements of LEAs under applicable federal, state, and local laws, including those relating to special education. LEA status shall not preclude a public charter school from developing partnerships with districts for services, resources, and programs by mutual agreement or formal contract.

(b) A public charter school shall have primary responsibility for special education at the school, including identification and service provision. It shall be responsible for meeting

Written Charter

NRS 386.527 Approval of application; contents and term of written charter; request for change in sponsorship; term of written charter; request for amendment to written charter; issuance of written charter to applicant who is not prepared to commence operation.

5. Except as otherwise provided in subsection 7, a written charter must be for a term of 6 years unless the governing body of a charter school renews its initial charter after 3 years of operation pursuant to subsection 2 of NRS 386.530. A written charter must include all conditions of operation set forth in subsection 4 of NRS 386.520 and include the kind of school, as defined in subsections 1 to 4, inclusive, of NRS 388.020 for which the charter school is authorized to operate. If the State Public Charter School Authority or a college or university within the Nevada System of Higher Education is the sponsor of the charter school, the written charter must set forth the responsibilities of the sponsor and the charter school with regard to the provision of services and programs to pupils with disabilities who are enrolled in the charter school in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., and NRS 388.440 to 388.520, inclusive. As a condition of the issuance of a written charter pursuant to this subsection, the charter school must agree to comply with all conditions of operation set forth in NRS 386.550.

6. The governing body of a charter school may submit to the sponsor of the charter school a written request for an amendment of the written charter of the charter school. Such an amendment may include, without limitation, the expansion of instruction and other educational services to pupils who are enrolled in grade levels other than the grade levels of pupils currently approved for enrollment in the charter school. If the proposed amendment complies with the provisions of NRS 386.490 to 386.610, inclusive, and any other statute or regulation applicable to charter schools, the sponsor may amend the written charter in accordance with the proposed amendment. If the sponsor denies the request for an amendment, the sponsor shall provide written notice to the governing body of the charter school setting forth the reasons for the denial.

7. The State Board shall adopt objective criteria for the issuance of a written charter to an applicant who is not prepared to commence operation on the date of issuance of the written charter. The criteria must include, without limitation, the:

(a) Period for which such a written charter is valid; and

(b) Timelines by which the applicant must satisfy certain requirements demonstrating its progress in preparing to commence operation.

➥ A holder of such a written charter may apply for grants of money to prepare the charter school for operation. A written charter issued pursuant to this subsection must not be designated as a conditional charter or a provisional charter or otherwise contain any other designation that would indicate the charter is issued for a temporary period.

8. The holder of a written charter that is issued pursuant to subsection 7 shall not commence operation of the charter school and is not eligible to receive apportionments pursuant to NRS 387.124 until the sponsor has determined that the requirements adopted by the State Board pursuant to subsection 7 have been satisfied and that the facility the charter school will occupy has been inspected and meets the requirements of any applicable building codes, codes for the prevention of fire, and codes pertaining to safety, health and sanitation. Except as otherwise provided in this subsection, the sponsor shall make such a determination 30 days before the first day of school for the:

(a) Schools of the school district in which the charter school is located that operate on a traditional school schedule and not a year-round school schedule; or

(b) Charter school,

➥ whichever date the sponsor selects. The sponsor shall not require a charter school to demonstrate compliance with the requirements of this subsection more than 30 days before the date selected. However, it may authorize a charter school to demonstrate compliance less than 30 days before the date selected.

(Added to NRS by 1999, 3289; A 2001, 3129; 2005, 1662, 2400, 2538; 2007, 1256, 2571; 2009, 259; 2011, 2363, 3049)

NAC 386.050 "Written charter" defined. (NRS 386.540) "Written charter" means a written charter granted by the board of trustees of a school district, a college or university within the Nevada System of Higher Education or the State Board of Education pursuant to NRS

386.527. The written charter includes both the application to form a charter school approved by the sponsor and a written agreement signed by the sponsor and the charter school.

(Added to NAC by Dep't of Education by R196-97, eff. 3-13-98; A by R163-99, 2-2-2000; R193-01, 4-1-2002; R169-07, 9-18-2008)

NAC 386.220 Written charter: Inclusion of certain agreements; term. (NRS 386.527, 386.540)

1. In addition to the information required pursuant to NRS 386.527, a written charter must include a description of any other agreements entered into between the sponsor of the charter school and the charter school. The sponsor of a charter school shall amend the written charter, if necessary, to reflect any such agreements entered into after the written charter is issued.

2. The 6-year term for which the written charter of a charter school is valid, unless the initial written charter of the charter school was renewed after 3 years of operation pursuant to subsection 2 of NRS 386.530, begins on the date on which the State Board of Education, the board of trustees or a college or university within the Nevada System of Higher Education approves the application to form the charter school pursuant to subsection 1 of NRS 386.527.

(Added to NAC by Dep't of Education by R196-97, eff. 3-13-98; A by R024-01, 11-1-2001; R193-01, 4-1-2002; R171-05, 2-23-2006; R169-07, 9-18-2008)

National Alliance for Public Charter Schools

Charter Contract

One of the essential characteristics of the public charter school concept is a fixed-term, renewable contract between a school and its authorizer. Such a contract defines the roles, powers, responsibilities, and performance expectations for the school and its authorizer. While some states explicitly require an authorizer to enter into a charter contract with a school, several state laws omit such a requirement. To make clear that schools and authorizers must enter into such contracts, the model law provides the following definition of a "charter contract":

"A 'charter contract' means a fixed-term, • renewable contract between a public charter school and an authorizer that outlines the roles, powers, responsibilities, and performance expectations for each party to the contract."

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POLICY GUIDE

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NATIONAL ASSOCIATION OF CHARTER SCHOOL AUTHORIZERS

Charter School Contracts

The National Association of Charter School Authorizers (NACSA) is the trusted resource and innovative leader working with educators and public officials to increase the number of high-quality charter schools in cities and states across the nation. NACSA provides training, consulting, and policy guidance to authorizers and education leaders interested in increasing the number of high-quality schools and improving student outcomes. Visit us at www.qualitycharters.org.

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About NACSA's Policy Guide Series

The growth and quality of a charter school sector is largely dependent on state policies that define approval, monitoring and renewal structures, criteria and processes. NACSA's Policy Guide series is intended to support state legislatures in developing policy environments that promote quality authorizing and high-quality charter schools. Additional copies of this Guide are available upon request.

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A charter school is a multi-year, multi-million-dollar operation in which the public authorizes a third-party to operate a public school in exchange for meeting defined, objective, measurable performance outcomes. A legally binding contract between the two parties – the charter school and its authorizer – defines the rights and responsibilities of each party and is essential for achieving the intended expectations of the relationship.

Background on Charter School Contracts

The charter school concept was first introduced in 1991 when the Minnesota Legislature passed the nation's first charter school law. As of this writing in 2009, 40 states and the District of Columbia have charter school legislation. While the specific characteristics and nuances of these laws vary from state to state, almost every state law explicitly or implicitly requires a charter school to enter into a contract with its authorizer. The contract defines and protects the charter school's autonomy over key operational decisions while specifying anticipated performance outcomes. This agreement is the linchpin of the charter school concept, as it establishes and protects the rights and responsibilities of each party. A quality contract is essential to fully realizing the potential of charter schooling.

Key Considerations for Policymakers on Charter School Contracts

What is a "charter school contract?"

A charter school contract is the legally binding agreement executed by a charter school and its authorizing agency. This agreement stipulates the terms and conditions by which the school will operate and defines the rights and responsibilities of each party, including performance expectations and conditions for renewal. A charter school contract serves as both an administrative and performance agreement.

It is important to note that a charter school contract is not simply an approved charter school application. A charter school application is a proposed plan, prepared by one party, for the establishment and operation of a new school. By contrast, a charter contract is an agreement entered into by two parties that specifies each party's rights and responsibilities.

The contract negotiations between a charter school and its authorizer should commence immediately after a charter school application has been approved. Indeed, many authorizing agencies make approval contingent upon the subsequent execution of a contract. Given its importance, a charter school should not be allowed to begin operation without an executed contract.

With which entity does an authorizer enter into a contract?

Governing authority is one of the key autonomies afforded to charter schools. State charter school law establishes that an independent governing board is ultimately legally responsible to the public for the school's operations. It is this governing body that "holds the charter;" therefore, state charter school law should require that a charter school contract be executed between an authorizer and a charter school's governing body.

What are the essential provisions of a quality charter school contract?

The key to determining what should be included in a contract is a question of materiality – a definition grounded in legal practice rather than in policy. Something is material if it is relevant and significant

to the outcome.[1] In the chartering context, a provision is material if it is significant to charter school renewal. Material provisions that should be included in a contract fall into a number of broad categories,[2] which states should require as a minimum foundation for charter school contracts:

- **Recitals** – affirming the legal authority of the authorizer and charter school to enter into a contract and the circumstances under which the contract is being entered.
- **Establishment of the School** – articulating the conditions of the school's existence such as legal status and requirements of the governing body.
- **Operation of the School** – setting forth key operational terms ranging from the school's mission and student enrollment to the educational program, school calendar, and student discipline.
- **School Financial Matters** – defining the key funding processes and provisions, and the financial responsibilities of each party.
- **Personnel** – describing the status and requirements of the school's employees.
- **Charter Term, Renewal and Revocation** – stating the length of the charter term and conditions for renewal and revocation.
- **Operation of the Contract** – describing how the contract will be upheld and enforced, addressing procedures ranging from contract amendment to dispute resolution.
- **Authorizer Policies** – presenting, often through exhibits, the authorizer's policies, practices, and expectations for the charter school from pre-opening through the renewal decision. This section should include the authorizer's evaluation framework and clear, measurable performance standards and expectations for the charter school. In many ways, these policies and expectations might be considered the heart of the contract.

As a matter of practice, many of the terms and provisions in a charter contract will be consistent or similar for all schools that an authorizer oversees. However, there may be specific terms that the authorizer negotiates with a given charter school due to that school's particular design or circumstances. For example, a high school serving dropouts will have different expected outcomes from an elementary school. In order to systematize their practices, authorizers typically develop a contract template that contains the "boilerplate" language applicable to any school they authorize, while negotiating any school-specific terms with individual schools.

How long should the term of a charter school contract be?

The ability to operate a charter school is a privilege, not a right. A contract should be awarded for a limited, renewable term. Prior to the expiration of the term, the authorizer evaluates the school's performance against the contract's expectations and determines whether the contract should be renewed or not (see NACSA Policy Guides on Performance Accountability and Contract Renewal).

In setting the initial charter contract term limit, it is important to consider the life cycle of a new charter school. Many charter schools start with just one grade level, taking several years to expand to full enrollment. In addition, most start-up charter schools face one to two years of start-up challenges that may impact school performance. An initial charter contract should account for these factors by extending the term beyond this period of start-up and early growth.

Furthermore, the high-stakes nature of renewal decisions calls for the authorizer to gather and analyze a rich body of multidimensional data over the entire charter contract term. States should provide for an initial charter term that will produce significant data before a renewal decision is required, to enable the authorizer to assess trends in the school's performance beyond the start-up years.

Most states set an initial charter contract term at five years, which allows a school to progress beyond the initial start-up phase and produce a sufficient

The central purpose of a well-developed, comprehensive charter school contract is to clarify and codify for both parties how the authorizer-school relationship should function and what outcomes the school should achieve.

performance record and body of data needed for sound high-stakes renewal decisions. At the same time, states should empower authorizers to revoke a school's contract prior to the end of the contract term in cases of extreme underperformance, misfeasance, or malfeasance that imperils students or public funds.

Some states allow authorizers to grant longer charter contract terms (e.g., up to 15 years) to schools after they have achieved renewal of their initial contracts. Years ago, these longer terms helped these more mature charter schools obtain affordable facilities financing. The charter school facility finance market has now matured to the extent that such long term charter contracts are no longer necessary to achieve financing. Thus, states with such policies should consider reverting to more traditional 5-year charter contracts or should ensure that authorizers are empowered to take appropriate action if school performance lags in the middle of a longer post-renewal term.

Should the terms of a contract be amendable?

The central purpose of a well-developed, comprehensive charter school contract is to clarify and codify for both parties how the authorizer-school relationship should function and what outcomes the school should achieve. Both parties should thoughtfully and carefully consider these matters before executing the contract. Frequent revision of the contract undermines the parties' ability to rely on these established expectations.[3] And as noted above, a quality contract gives the school significant day-to-day autonomy to make changes in its operation as it learns lessons, without seeking a contract amendment each time it wants to correct its course.

Still, circumstances may arise that warrant an amendment to the contract. Either party to the contract must be able to propose an amendment to the contract. The other party must be free to accept, decline or modify the proposed amendment. If a state's law requires an initial charter to be reviewed, approved or certified by a higher authority (such as the state education agency), the amendment to a charter contract should also be handled in the same manner.

How are contracts enforced?

A contract has little value unless both parties actively uphold and enforce the terms it embodies. For authorizers, this enforcement requires measuring school performance against the contract terms to drive renewal decisions.

To do so, states should empower and require authorizers to diligently monitor and evaluate each school's performance throughout its charter contract term. Ongoing monitoring and evaluation may take place through a range of activities including reporting requirements, site visits or school inspections, and an annual financial audit.[4] In cases where performance lags expectations, states should empower authorizers to exercise appropriate interventions, or in extreme cases, to revoke the school's charter contract.

A contract also gives the charter school a vehicle for defining, preserving and protecting its rights. The existence of a contract itself is often sufficient to protect those rights. On occasion, however, a school might seek to appeal to a higher authority, such as a state board of education or the courts, to protect its rights, using the contract as the basis for doing so.

Recommendations and Best Practices for State Policy on Charter School Contracts

To lay a foundation for sound, fair and transparent charter school contracting processes, NACSA recommends that states enact policies that reflect the following best practices:

- **Require charter schools and authorizers to execute a formal, legally binding contract prior to operation.** The contract should define the rights and responsibilities of each party, including specifying the school performance outcomes expected for charter contract renewal.
- **Establish the material terms to be included in a contract, while giving authorizers flexibility to structure the details.** State policy should require charter school contracts to include standard provisions applicable to any charter school. It should also allow authorizers and charter schools to negotiate school-specific terms as appropriate. While providing a basic framework for charter contracts, states should grant authorizers flexibility to structure their charter contracts as they see fit, so long as they a) meet the state's basic requirements; b) generally include only terms and provisions relevant and significant to the outcome of charter contract renewal or revocation; and c) are consistent with the state's charter school law.
- **Set a minimum and maximum term limit for initial and renewal contracts.** The duration for an initial contract should provide adequate time for a new charter school to move beyond the initial start-up phase and for authorizers to gather a rich body of multidimensional data on a school's performance that will inform a renewal decision. NACSA recommends an initial term of five years. States should consider allowing authorizers to execute longer renewal contract terms for charter schools with a strong record of performance, provided that authorizers retain the power to take corrective measures if warranted by school underperformance, including revocation in extreme cases.
- **Empower authorizers to enforce charter school contracts, through the authority to revoke or not renew a contract based on performance against the contract's specified terms.** States should empower and require authorizers to engage in diligent oversight over the charter contract term. Such oversight may include a range of monitoring and evaluation activities to assess and analyze school performance against the terms of the contract. Likewise, states should empower authorizers to take appropriate corrective action where needed, or in extreme cases of underperformance or wrongdoing, revoke a contract. State policy should direct authorizers to grant renewal only to schools that have met the terms of their contracts.

Resources and Further Analysis

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[1] See Haft, W., "The Terms of the Deal: A Quality Charter School Contract Defined," at 3.

[2] See National Alliance for Public Charter Schools, *A New Model Law for Supporting the Growth of High-Quality Public Charter Schools*, for model contract provisions for a state charter school law.

[3] See Haft, W., "The Terms of the Deal: A Quality Charter School Contract Defined," at 7.

[4] See National Association of Charter School Authorizers, *Principles and Standards for Quality Charter School Authorizing: Ongoing Oversight and Evaluation.*

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NATIONAL ASSOCIATION OF CHARTER SCHOOL AUTHORIZERS

Charter School Performance Accountability

The National Association of Charter School Authorizers (NACSA) is the trusted resource and innovative leader working with educators and public officials to increase the number of high-quality charter schools in cities and states across the nation. NACSA provides training, consulting, and policy guidance to authorizers and education leaders interested in increasing the number of high-quality schools and improving student outcomes. Visit us at www.qualitycharters.org.

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Charter School Performance Accountability: The Heart of the Matter

Charter schools are public schools that operate under performance contracts with an authorizing agency. These schools receive operating autonomy in exchange for meeting clear, objective, and measurable performance outcomes. Schools that fail to meet these defined outcomes should lose their authorization to operate.

Background on Charter School Performance Accountability

Charter schools emerged in the early 1990s as a strategy for improving student learning and increasing quality educational options, often for underserved students and communities. The charter school idea centers on the promise of increased autonomy for accountability for results. Thus, the charter movement has helped to lead the charge – and has provided valuable models and lessons – for greater accountability in public education.

Across the country, however, the record of charter schools is mixed. Eighteen years into this reform movement, the charter school sector is performing well in some states, while falling short of expectations in others.[1] At the same time, the impact of state policy on the quality of a state's charter sector is increasingly recognized. To strengthen the quality of charter schools, states should provide a clear foundation, structure and guidance for authorizers to hold charter schools accountable for their performance.

Performance accountability for charter schools means accountability for both academic and operational performance, focusing on objective outcomes rather than inputs. It includes, but goes beyond, legal and regulatory compliance. In a well-designed statewide accountability system for charter schools, the state establishes minimum standards and essential elements to guide charter school evaluation generally, while enabling authorizers to develop the details of the contract in conjunction with the schools they oversee.

Two key pillars are required for a strong statewide structure for charter school accountability:

1) **A clear contract**, executed before the school begins operating, that sets forth a) the essential academic and operational performance standards and expectations the school must meet in order to earn the right to continue operating, and b) the types of data that will inform the authorizer's judgment.

To strengthen the quality of charter schools, states should provide a clear foundation, structure and guidance for authorizers to hold charter schools accountable for their performance.

2) **A strong body of evidence** built upon sound, multidimensional data specified in the contract and collected, analyzed, and reported at least annually by the authorizer over the term of the school's contract.

Operational accountability for charter schools includes both financial management and legal compliance. State charter school laws should (and most do) explicitly state that financial mismanagement or material violation of applicable laws is grounds for revoking or not renewing a contract. These domains are generally straightforward for authorizers to assess through objective means such as regular financial audits and compliance audits.

In contrast, academic accountability is often inadequately addressed in state charter school laws, and thus thornier for authorizers to enforce.[2] Policymakers can improve state law and policy to help authorizers make educational judgments that are grounded in sound data, firmly defensible, and less vulnerable to endless debate and controversy.

Key Considerations for Policymakers in Structuring Sound Performance Accountability for Charter Schools

What charter school performance standards and requirements should state law include?

To provide clear guidance to help authorizers make sound, solidly defensible judgments on educational performance, states should:

- Make clear that charter schools are subject to the same academic standards and expectations as all public schools in the state;
- Require charter school contracts and evaluations to center on objective, measurable, and multi-dimensional data focused on **performance outcomes** – not inputs or subjective data;
- Define minimum academic and operational performance elements as a basic framework for charter school accountability; and
- Allow authorizers, in developing performance expectations with charter schools, to augment state standards and expectations with additional rigorous, valid, and reliable measures and metrics.

States should require charter school accountability to be built around a performance plan, that is codified in the school's contract with its authorizer, that clearly sets forth the academic and operational performance **indicators, measures, metrics, and targets** (see box) that guide authorizer evaluations of every charter school. States should establish the required elements of the plan, while giving authorizers latitude to develop the specifics of plan. State law and policy should ensure that charter contracts and authorizer-developed accountability requirements are appropriately focused on performance and consistent with the intent of the charter school law and national best practices for charter school accountability. Equally important, state law and policy should ensure that charter contracts and accountability requirements are not an avenue for "regulatory creep" that hinders charter school autonomy.

Charter School Performance Plan Elements: Key Terms[3]

The performance elements recommended in this section are drawn from a *Framework for Academic Quality* developed by a national Consensus Panel under NACSA's co-leadership. This framework is built around (from the most general to the most specific):

Indicators >> Measures >> Metrics >> Targets

Indicators. Indicators represent general dimensions of academic quality or achievement, such as *"Postsecondary Readiness and Success."*

Measures. Measures are general instruments or means to assess performance in each area defined by an indicator. Measures require the application of specific metrics or calculation methods (see below). For example, a measure of postsecondary readiness is *high school completion.*

Metrics. Metrics specify a quantification, calculation method, or formula for a given measure. For example, the typical high school completion metric is a *graduation rate*, such as *"the percentage of ninth-graders graduating in four years."*

Targets. Taking metrics a step further, targets are specific, quantifiable objectives that set expectations or define what will constitute success on particular measures within a certain period of time. For example, a graduation-rate target might be *"90% of ninth-graders graduating within four years."* Likewise, state-mandated performance levels are common targets.

States should require charter school contracts[4] to include a performance plan that includes, at a minimum, a core set of indicators and related measures, metrics, and targets (see box).[5]

Charter School Performance Plan: Essential Elements

- Student achievement levels based on state content and performance standards
- Student academic growth over time
- Achievement gaps between major student subgroups in both student achievement levels and academic growth
- Attendance
- Recurrent enrollment from year to year
- Postsecondary readiness (for high schools)
- Financial performance and sustainability
- Compliance with all applicable laws, regulations, and the terms of the charter contract

Why is it important to measure student academic growth?

The school performance indicator that most state accountability systems rely on – an aggregate student achievement level or "status" for a particular grade in a particular year – is a "snapshot" that reveals nothing about how much schools improve (or fail to improve) student learning over time, given students' individual starting points. Rigorously measuring student academic growth over time is necessary to reveal what schools are accomplishing or not accomplishing with their students, and often provides a dramatically different picture of school performance. It may reveal, for example, that a school that would be judged as "low-performing" on status alone is actually accelerating student learning far faster than any other school in the district. Conversely, it can show that a school always praised as "high-performing" is simply maintaining students at the same level, rather than challenging and helping them achieve more each year.

For this reason, sound growth measures and data are essential components of a strong performance accountability system for charter schools. Measuring growth requires appropriate assessments and methodologically sound data analysis, and states should ensure that a sound model is used to measure student academic growth in all public schools, including charter schools.[6] This model should include requiring a rigorous and consistent methodology to measure the **rate** of individual student growth toward state content and performance standards – to ensure that students are making not only some progress, but enough progress to reach standards within a certain number of years.

Should the state require the closure of charter schools that chronically fall short of minimum performance expectations set for all public schools?

States should require charter schools to meet the same minimum performance expectations as district schools, and charter schools that persistently fail to meet minimum state-defined thresholds for student achievement and academic growth should be closed. Authorizers' decisions to renew, not renew, or revoke a charter should be based on a school's actual performance to date on a set of clearly defined performance measures and operational criteria. Such decisions should be based on what has happened, not on what might happen in the future.

Should there be different standards for different kinds of charter schools?

By design, charter schools across a state will likely have diverse missions and serve diverse student populations. Such diversity underscores the importance of the state's responsibility to provide for a common system of accountability – ensuring that all schools meet certain minimum expectations and prepare students for their next step, whether it is middle school, high school, or a variety of postsecondary options. A well-designed school performance plan captures improvements in student learning for all types of students and the minimum performance plan elements recommended above are applicable to any charter school, regardless of its mission or particular population.

Many charter schools target students who are marginalized or underserved in mainstream district schools – such as students with disabilities, English learners, students at risk of dropping out, or court-involved youth. These schools were granted charters specifically because they promised to successfully improve outcomes for these students. The above performance plan's attention to student academic growth as well as other indicators makes it highly applicable and meaningful for the many special populations served by charter schools. State policy should recognize that charter schools serving non-mainstream populations should be **no less accountable** for student outcomes.

What general responsibilities and requirements should states set for monitoring and evaluating charter school performance?

State law should explicitly require authorizers to monitor the performance and legal compliance of the charter schools they oversee, and empower authorizers to conduct oversight as needed to execute their responsibilities. States should empower authorizers to conduct appropriate inquiries and investigations, so long as those activities are consistent with the intent of the charter school law, adhere to the terms of the charter contract, and do not unduly inhibit the autonomy granted to charter schools. Likewise, to provide for consistent, quality evaluation of charter schools across a state, states should:

- Ensure that all authorizers have access to student-level assessment data. Student-level data, as opposed to simply school-level data, is essential to the performance plan and quality analyses recommended here.
- Ensure that all authorizers have access to data needed to compare their charter schools' performance to other relevant public schools in the state.
- Establish authorizer responsibility for collecting, analyzing, and reporting performance data from state or authorizer-required external assessments for the charter schools that they oversee. Authorizers should not rely, for example, on school self-reporting of unverified data or on school calculations of student academic growth (which are unlikely to meet the methodological requirements established by the state). Authorizer responsibility for these critical tasks is necessary to ensure data accuracy as well as consistent, rigorous methodology of data analysis across schools.

Recommendations and Best Practices for State Policy on Performance Accountability

To establish clear, consistent performance accountability for charter schools across a state, NACSA recommends the following best practices for state policymakers. For specific recommended statutory language on these matters, see A New Model Law for Supporting the Growth of High-Quality Public Charter Schools, Article VII, Section 1.[7]

- **Require a clear performance plan, codified in the contract between a charter school and authorizer, to be executed prior to any charter school opening.** The performance plan and contract should specify the body of multidimensional data, to be collected and analyzed over the charter term, on which a school will be judged. States

By design, charter schools across a state will likely have diverse missions and serve diverse student populations. Such diversity underscores the importance of the state's responsibility to provide for a common system of accountability – ensuring that all schools meet certain minium expectations and prepare students for their next step.

should require charter school contracts to focus on objective performance outcomes and include measures, metrics and targets for all the essential Charter School Performance Plan indicators presented above, at a minimum (see box on p. 3).

- **Define minimum standards and requirements for academic and operational performance for all charter schools, while leaving latitude for authorizers to set specific expectations in conjunction with schools.** State law should make clear that charter schools are subject to the same academic standards and performance expectations as all public schools in the state. States should make charter schools subject to closure for chronic failure to meet state-defined minimum thresholds for student achievement and growth.
- **Set basic standards for data analysis used to evaluate charter schools.** States should require longitudinal and disaggregated analysis of all student performance data using consistent, rigorous methodology for all charter schools statewide, including measurement of the adequacy of student growth toward state content and performance standards.
- **Guard against "regulatory creep."** State law and policy should work to ensure that charter school contracts and authorizer-developed accountability requirements are appropriately focused on performance outcomes and consistent with the intent of the charter school law – rather than a vehicle for unnecessary reporting and compliance burdens.
- **Empower authorizers to conduct oversight activities that enable them to hold charter schools accountable for performance.** State law should explicitly grant authorizers the authority to conduct oversight activities that enable authorizers to fulfill their statutory responsibilities, provided that such oversight activities are consistent with the intent of the charter school law, adhere to the terms of the charter contract, and do not unduly inhibit the autonomy granted to charter schools. To enable quality evaluation of charter schools statewide, states should also provide for:

  1) Universal authorizer access to student-level assessment data for the schools they oversee, as well as to data needed to compare their schools' performance to other relevant public schools in the state.

  2) Authorizer responsibility for collecting, analyzing and reporting all data from state or authorizer-required external assessments.

Resources and Further Analysis

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Acknowledgements

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[1] See, e.g., *Multiple Choice: Charter School Performance in 16 States*, CREDO at Stanford University (2009).

[2] A high proportion of charter school closure decisions are explicitly based on reasons other than academic performance. A national study shows that two-thirds of mid-term charter revocations have occurred for reasons other than academic performance. Gau, R., *Trends in Charter Authorizing*, Thomas B. Fordham Institute (2006), at 10.

[3] Adapted from *A Framework for Academic Quality*, at 7.

[4] This framework does not reflect all the contents of a charter contract; rather, these are only minimum recommended elements pertaining to academic and operational performance. For fuller guidance on structuring charter school contracts, see Cass, R., "The Terms of the Deal: Charter School Contracts," NACSA Policy Guide, National Association of Charter School Authorizers (September 2009) and Haft, W., "The Terms of the Deal: A Quality Charter School Contract Defined," NACSA Issue Brief No. 18 (February 2009).

[5] These elements are adapted from performance frameworks recommended in *A Framework for Academic Quality* (2008) and *A New Model Law for Supporting the Growth of High-Quality Public Charter Schools*, National Alliance for Public Charter Schools, Article VII, Section 1 (2009), at 40-41.

[6] For a fuller practical introduction to growth measures and why rigorously measuring student academic growth is critical to valid school evaluation, see Ernst, J. and Wenning, R., "Leave No Charter Behind: An Authorizer's Guide to the Use of Growth Data," NACSA Issue Brief No. 19 (July 2009).

[7] *A New Model Law for Supporting the Growth of High-Quality Public Charter Schools*, Article VII, Section 1.

Authorizing Matters

FEBRUARY 2009

Issue Brief

William Haft

The Terms of the Deal: A Quality Charter School Contract Defined

Introduction

Man, an animal that makes bargains.[1]

A contract is about commitment and responsibility. It is about the commitment that two or more parties make and the responsibility to deliver on those commitments. When school developers and authorizers turn a charter application into a contract, the relationship transforms: it shifts from aspiration to expectation and from theory to practice. The charter application contains the aspirations and theories of what the school can be. The contract defines the practical expectations for what, in fact, the school will become.

The contract is the embodiment of the autonomy-for-accountability bargain and the commitments of both parties. The authorizer commits to entrusting public dollars and public school students to the independent governing board of the school. It also commits to giving the governing board more flexibility in how it operates the school than is afforded traditional public schools. In return, the school's governing board commits to handling the funds responsibly, complying with its legal obligations, and educating the students well.

NACSA's *Principles and Standards for Quality Authorizing* state that a quality authorizer "negotiates contracts with charter schools that clearly articulate the rights and responsibilities of each party regarding school autonomy, expected outcomes, measures for evaluating success or failure, performance consequences and other material terms."

The contract is what makes school-based autonomy and accountability real and thus is critical for making the charter school concept work. This Issue Brief[2] presents the legal framework in which the contract operates, the categories that the material terms should cover, and limitations on the scope. The purpose is to provide the reader with an overview of how to develop a quality charter school contract.

The contract is what makes school-based autonomy and accountability real and thus is critical for making the charter school concept work.

nacsa
NATIONAL ASSOCIATION OF CHARTER SCHOOL AUTHORIZERS

External Authority

Justice requires that to lawfully constituted authority there be given that respect and obedience which is its due.[3]

Contracts do not exist in a vacuum. Authorizers and schools operate under the shadow of laws and regulations. Charter schools operate within a multi-layered legal framework that typically includes federal law, state law, local codes and school board policies.

At the same time, charter schools are often intended to be exempt from many laws and regulations that constrain the operation of traditional public schools. It is important for the parties to understand and be able to determine which external rules apply and which do not. For that reason, the contract should recognize and identify the external authorities that are relevant to the school's operation.

Federal Law. Charter schools are not exempt from federal education- and civil rights-related law including No Child Left Behind (NCLB), the Individuals with Disabilities Education Act (IDEA), FERPA (education records privacy), Title VI (civil rights), Title IX (sexual harassment), and ADA (disabilities). The contract should, at a minimum, identify federal laws to which the school is subject. To the extent that the state has developed specific requirements related to the implementation of NCLB, those should be included in the contract.

State Law and Regulation. In contrast to the uniform application of federal law, the applicability of state law and regulation to charter schools varies widely. In some states such as Arizona, charter schools have an automatic waiver from many state laws and regulations that constrain the decision-making authority of traditional public schools. In other states, such as Colorado, charter schools may receive waivers based on a satisfactory explanation of the reason. In still others, schools are presumed to be subject to all relevant education laws unless the charter law specifically provides otherwise.

Whatever the availability of waivers, the following are among the categories of state law and regulation that typically apply to all charter schools:

- Health, safety and welfare
- Civil rights
- State testing and accountability
- Open government (public records and meetings)

The contract should explicitly identify the state law and regulations with which the school is expected to comply.

Authorizer Requirements. Particularly in the case of school district authorizers, it is sometimes within the authorizer's discretion to determine which, if any, of its policies and procedures will apply to charter schools. For example, it may be up to the authorizer to decide whether protocols and procedures for reporting performance information that apply to traditional public schools will also apply to charter schools. The contract should identify which authorizer policies and procedures are applicable.

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Charter Application. The charter application is not the same as the contract. The application contains a blueprint for the school as conceived by the founding group; however, not every part of the application need be part of the contract. Only those pieces that are integral to the school's identification or operation, such as the school's mission, location, educational philosophy and program, should be incorporated. In general, components of the application that are material to the school's operation and form the basis on which the authorizer will hold the school accountable should be incorporated into the contract. The topic of materiality is discussed in more detail, below.

The *Authorizing Matters* Issue Briefs are a publication of the National Association of Charter School Authorizers, a professional resource for authorizers and public education officials working to achieve quality through new public schools. NACSA broadly disseminates each Issue Brief in print and electronic forms. Additional printed copies are available by request.

Your comments, questions and suggestions about this brief or the series are welcome.

Material Terms

A lean agreement is better than a fat lawsuit.

The contract should present the material terms (see *"What is a Material Term?"* below) in an organized way that is coherent and easy to reference. In its work with authorizers like the Recovery School District in Louisiana and the Florida Schools of Excellence Commission, NACSA has used the following categories for material terms.

Recitals. This introductory section should reitetate the purposes of the charter school law, the authority of the authorizer and the school to enter into an agreement, and the circumstances under which the contract is being entered (such as the date and status of the application approval). Typically, the recitals are presented as a series of "Whereas ..." statements.

Establishment of the School. This section should define the circumstances of the school's existence, including affirming legal status of the school, authority of the signatories, and restrictions or requirements that apply to the school's governing body. The authorizer should be contracting not with an individual or group of individuals but with an entity that is legally defined and established consistent with the state's charter school law. In most states this entity must be a not-for-profit corporation.

The section on Establishment of the School should also identify the school's location.

Operation of the School. This section typically begins with the school's approved mission statement, either by stating it or by reference to the approved application. It should also address governance issues such as the requirement that the governing board adopt legally valid bylaws; operate consistent with those bylaws; and hold open meetings consistent with statutory transparent governance requirements.

The application should serve as a constant reference for the school's operational requirements. The application will often have addressed issues such as the grade ranges and number of students, student recruitment and enrollment practices, the school calendar, student discipline, handling of student records, and various assurances related to how the school will operate. In most cases, the contract can reference relevant parts of the approved application or applicable law. However, even where a topic has been addressed in the application, the contract term may require more specificity. For example, the application will likely specify a target enrollment number, but the contract should also address the degree of variation from that number (either above or below) that will be treated as material compliance. Similarly, the typical application will present a discipline plan that ultimately needs to be translated into a formal policy. The policy is what should be incorporated into the contract. In this way, the approved application serves as a constant touchstone for the contract without being assumed to have fixed the exact terms of that agreement.

School Financial Matters. Schools are entitled to clarity around the funding process and amounts, particularly when the funding flows through the authorizer. The School Financial Matters section should document the funding process and calculation from entollment reporting to the funding formulas, to the schedule for funding transfers.

Schools should know the authorizer's expectations with respect to financial management and records. To this end, the section on School Financial Matters should address annual audit requirements, reporting requirements, asset ownership, and asset disposition in the event of school closure.

Personnel. Charter schools usually have a great degree of autonomy over personnel matters. A standard personnel provision expresses the charter school's election to have "at will" employment. Other Personnel provisions address background check requirements and restrictions for school employees, certification requirements for teachers and paraprofessionals consistent with the No Child Left Behind Act, and a requirement for the adoption of employment policies. On the whole, the school's broad authority to han-

WHAT IS A MATERIAL TERM?

"Materiality" is one of those rare legal concepts whose legal meaning is both straightforward and has remained generally consistent with common usage. Something is material if it is relevant and significant to the outcome. For example, a material witness is someone who has information relevant and significant to determining the guilt or innocence of the defendant. For charter schools and authorizers, the relevant outcome is a renewal decision. So consideration of whether a charter contract term is material hinges first and foremost on whether it would be relevant and significant to the authorizer in making a renewal decision.

dle personnel matters means that the Personnel section should be relatively brief.

Charter Term, Renewal and Revocation. The charter school contract should state the length of the charter term. This section should also provide guidance regarding the basis on which the authorizer will make a renewal decision, the circumstances that may warrant revocation, and authority for the dissolution of assets in the event of school closure.

Operation of the Contract. There are typically a number of standard provisions that clarify how the contract itself will operate. These include indemnification, notice, waiver, severability, assignment, dispute resolution, amendment, and merger (entirety of the agreement). Most of these are generic legal terms for which legal counsel can provide standard language. However, the definition of and procedure for contract amendment and dispute resolution require authorizer input and judgment.

For amendments, the standard typically requires amendment for material changes to the contract. Some authorizers have an annual contract review process so that contract amendments can be made on a regular schedule rather than piecemeal. With respect to dispute resolution, the authorizer and the school should have an understanding and agreement on a procedure for resolving disputes. The procedure will vary depending on the nature of the authorizer. For example, a school district will likely have a different procedure than a not-for-profit or an independent authorizing agency.

Authorizer Policies. In many ways the heart of the contract is the policies and practices that should be included as exhibits. The policies and practices should document the authorizer's expectations from pre-opening through renewal decisionmaking. They should provide a road map for the school of the authorizer's expectations and of what the consequences may be for failure to meet those expectations.

Following are policies that the authorizer should establish and incorporate into the contract:

School Evaluation Framework: presents the performance standards that will provide the basis for renewal decisions based on state, federal and charter requirements.

Pre-opening Procedures: sets expectations for the start-up ptocess and helps schools understand what steps are needed to be prepared to open in an organized, effective fashion.

There are typically a number of standard provisions that clarify how the contract itself will operate.

Financial and Attendance Reporting: establishes clear timeline and content expectations for financial and attendance reporting.

Scope of Independent Audit: defines the appropriate scope of an independent charter school audit.

Comprehensive Educational Services Contract Requirements: establishes a contract review checklist designed to ensure that both the charter board and the authorizer retain authority to fulfill their legal rights and responsibilities under the charter and applicable law.

School Intervention Protocol: documents the circumstances and process by which the authorizer may intervene when the school is not fulfilling its contractual obligations.

Renewal Decision Making Protocol: Documents the process by which the authorizer will make charter renewal decisions.

School Closure Protocol: documents procedures for orderly, structured closure of a school following a nonrenewal or revocations decision.

The Balancing Act, Part I: Means and Ends

When you're committed to something, you accept no excuses, only results.[5]

In developing a charter contract, it is important to distinguish between means and ends. Means are about *how* things get done. They address process. Ends are about *what* the school ultimately accomplishes. They are about results.

The following table briefly illustrates the distinction between means and ends in the context of the charter school contract:

PERFORMANCE CATEGORY	MEANS	-->	ENDS
Educational Performance	Curriculum implementation; daily schedule; quality of instruction	-->	Student outcomes
Financial Performance	Financial management systems	-->	Financial position (reserve); audit results
Organizational Performance	Student recruiting; fundraising	-->	Enrollment; facility quality

It is central to the charter idea that schools be judged not on how they operate but on what they achieve. Charters are intended to have a great deal of autonomy and flexibility when it comes to the means: the educational and operational processes. The inherent tension is that most efforts to ensure educational equity and fairness, such as civil rights laws or the Individuals with Disabilities Education Act (IDEA), focus on procedure. Therefore, the charter contract must substantially regulate the area where charters are intended to have the most autonomy.

The focus on process or means is necessary not only because the contract is about legal compliance but also because the authorizer has a responsibility to ensure that schools are treated consistently and fairly. The authorizer must establish consistent expectations for compliance with the IDEA's procedural requirements. The authorizer must establish consistent expectations for organizational performance, such as compliance with health and safety requirements and fulfillment of the board's duty to operate as a publicly accountable entity. And the authorizer must establish common procedures to ensure that schools are treated fairly with respect to their receipt and management of public funds.

Although most requirements are designed to promote consistency and fairness, authorizers should remain cognizant that every additional compliance requirement demands time and resources from the school and the authorizer that might otherwise be focused on educational achievement. Each additional requirement places an additional burden on both the school and the authorizer for compliance, oversight and enforcement. Each additional requirement also constrains the school's flexibility and autonomy. As such, requirements intended to prevent failure also risk impeding success. Therefore, the authorizer should weigh the benefit of any new regulations against the potential cost.

The following questions may be helpful for conducting the cost benefit analysis of a new procedural requirement:

- Is the procedure legally required for charter schools?
- If so, is there authority to grant a waiver?
- If not legally required or if a waiver is possible, is the reason for imposing the requirement compelling?
- What is the additional burden on the school for compliance?
- What is the additional burden on the authorizer for oversight and enforcement?
- Does the need for the requirement outweigh the burden on the school and the authorizer for implementation?

Authorizers should conduct this type of analysis before imposing terms that, both individually and cumulatively, constrain the means by which a school operates.

The Balancing Act Part II: Knowing When to Stop

The rest is a mere matter of detail, to be settled with judgment, discretion, and caution.

At what point does the contract have sufficient detail that the rest can be "settled with judgment, discretion, and caution"? An experienced attorney will tell you that the contract should aim to anticipate and address any foreseeable circumstance that might arise between the parties. That approach is a thorough one. However, in its thoroughness, it contradicts a basic premise of charter schools – that the school must have flexibility to determine how best to achieve the outcomes for which it will be held accountable.

Perhaps a good test of whether a term warrants inclusion is whether a change to that term would be material (See *"What is a Material Term?"* on page 3). Typically, material changes to a contract require amendment. For example, the

physical location of the school is clearly material because the adequacy of the facility and the school's compliance with health and safety requirements are relevant and significant for a renewal decision. If a school changes its location, the contract should be amended to reflect the change. However, the decision to move the sixth grade math class to a different room almost certainly is not material. Similarly, most people would agree that the decision to eliminate the technology focus at a Science and Technology school would constitute a material change to the educational program but that the decision to hold science class in the morning versus after lunch would not. If a change to the contract term would be considered material – that is, if it would be relevant and significant to the renewal decision – then it should be included in the contract. If a change would not be material, then the term might well be unnecessary in the first place.

Closing

True mastery can be gained by letting things go their own way.[7]

A sound contract gives the parties what they need to go their own way. It documents what the school and the authorizer are required to do and what the school is required to achieve. It simplifies the job of oversight, enabling the authorizer to focus on holding the school accountable for doing what the contract requires. By defining expectations clearly, the authorizer gives the school the autonomy to be responsible for its own success.

FAQs

What is the difference between a "charter," a "contract," an "operating agreement," and a "performance agreement"?

Though it depends on the authorizer and the law, the answer is often that the difference is semantic. If the authorizer uses a document to memorialize the agreement with the school then it doesn't matter whether the name for that document is "charter," "contract," "operating agreement," or something else; as long as two parties have agreed to the terms and signed the document, it should be considered a binding agreement regardless of the name. Sometimes state law determines which term should be used. For example, Colorado law provides that an approved application be developed into a "contract." In other states, common practice in the charter school community has generated a term of art. In California, for example, the agreement that succeeds and supplements an approved petition (application) has, through common practice, come to be almost uniformly labeled a Memorandum of Understanding. Regardless of the label, a signed agreement between the school and the authorizer that sets out the rights and responsibilities of each party should be treated as binding.

Although the terms are generally interchangeable, you should refer to the law and to the particular authorizer to be certain. A few authorizers distinguish specific parts of the agreement. For example, at State University of New York's Charter Schools Institute, one section of the contract with schools is a performance agreement that focus specifically on the expectations for charter renewal.

How much of the law should be referenced or included in the contract?

As with many aspects of the contract, balancing and judgment is required in deciding how much of applicable law should be specifically referenced or included. On the one hand, the goal is to make the contract a complete documentation of the parties' rights and responsibilities. On the other hand, the contract should be manageable and of practical use. If the contract fails to mention applicable law, it is clearly incomplete. If it explicitly identifies and discusses every applicable law and regulation, it will quickly become unwieldy.

Helpful guidance in managing this balance lies in the "materiality" analysis discussed above. Strictly speaking, all applicable laws are material because violation of the law can be a basis for non-renewal (or even revocation) of the charter. However, some laws are more material than others. The laws that are most directly relevant and significant should receive explicit treatment in the contract, especially if their application to charter schools is not uniform. For example, IDEA, NCLB and the state's accountability system are directly relevant and significant for evaluating educational performance, but there is legitimate variation between states and sometimes even individual authorizers or schools regarding implementation. The contract should not only reference but also discuss explicitly how those laws translate to expectations for the school's operation and performance.

For other laws, the obligation to comply may be similarly significant but the perfotmance expectations may be more commonly and consistently understood. For example, most charter school laws require that a school conduct an annual independent audit. There are well-established professional standards for how to conduct an independent audit of a not-for-profit organization, and there are professional performance standards for the results. In that case, it may be sufficient for the contract simply to state the legal requirement that the school have an annual independent audit conducted by a certified accountant and state the performance expectation that there not be any significant findings.[8]

At the other extreme, there are laws and regulations whose materiality is more a matter of cumulative effect than of individual compliance. For example, charter schools are subject to myriad building codes and regulations. Violation of any one of those codes is, technically, a violation of the law and, therefore, grounds for nonrenewal or revocation. However, shott of serious health or safety violations, it is difficult to imagine non-compliance with a single building code having comparable weight in a renewal decision to violation of the IDEA or state accountability requirements. A general contractual reference to compliance with "all applicable law" should be sufficient to incorporate any and all legal requirements that are likely to become significant only in the event of cumulative non-compliance.

If the authorizer uses a document to memorialize the agreement with the school then it doesn't matter whether the name for that document is "charter," "contract," "operating agreement," or something else; as long as two parties have agreed to the terms and signed the document, it should be considered a binding agreement regardless of the name.

What is the status of the charter application once the contract is signed?

It is helpful for the contract to address the status of the approved application. Some contracts incorporate the application by reference. The benefit of this approach is a clear indication of the charter's status. The limitation is that the application typically contains much content and a level of detail that is not ultimately relevant to the contract. Ideally, a contract will incorporate only the parts of the application that are relevant to how the authorizer will ultimately evaluate the school.

What is the best way to handle contract amendment?

Contract amendment should be approached cautiously. It can be a time consuming and administratively burdensome process, especially for an authorizer that operates within a larger bureaucracy like a school district. In addition, frequent revision undermines the parties' ability to rely on the expectations that were established at the beginning of the charter term.

Yet changed circumstances sometimes make amendment necessary. One way to minimize the administrative burden is to give authorizer staff the authority to approve changes pending ratification by the governing board. Another is to establish an annual process for reviewing and amending contracts so that the contract can be reopened and amended, if necessary, at one time rather than piecemeal throughout the year.

What happens when something is not clear in the contract and the parties are in disagreement?

The contract should establish a dispute resolution procedure. As with other terms related to implementation of the contract, the dispute resolution procedure can generally be a standard term that is the same for all schools. A standard approach to dispute resolution helps to ensure legal compliance as well as consistency and fairness in how the authorizer interacts with its schools.

Should authorizers have one standard contract template for all its schools or negotiate separate contracts with individual schools?

An authorizer that has already chartered or expects to charter more than a few schools should have a contract template from which to negotiate individual agreements. New authorizers often negotiate sepatate contracts with each school; however, that approach tends quickly to become impractical. Many if not most contract terms, including those related to legal compliance and state performance standards, are imposed by external authorities and are, therefore, non-negotiable. A contract template will help the parties clarify which terms are negotiable and will help the authorizer generate clear consistent agreements with each school.

ENDNOTES

1 Adam Smith

2 This Issue Brief expands on content presented by William Haft and Paul O'Neill at NACSA's 2008 Annual Conference and provides the basis for NACSA's webinar on "The Rules of the Road: Developing Sound Performance Contracts."

3 Pope Pius XI.

4 German Proverb

5 Art Turock

6 John Griffin Carlisle

7 Tao te Ching

8 Notwithstanding professional standards, authorizers in some states have found enough inconsistency in accounting practices that they have developed policies establishing minimum requirements for the conduct of an independent audit. It is always important for an authorizer to exercise independent professional judgment based on experience with and understanding of the charter school sector.

ABOUT THE AUTHOR

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Special Education Burden of Proof

NRS 388.507 Hearings conducted pursuant to Individuals with Disabilities Education Act: Burden of proof and burden of production on school district during certain due process hearings. Whenever a due process hearing is held pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., regarding the identification, evaluation, reevaluation, classification, educational placement or disciplinary action of or provision of a free appropriate public education to a pupil with a disability, and a school district is a party, the school district has the burden of proof and the burden of production.

(Added to NRS by 2011, 800)

Educational Management Organization

NRS 386.562 Prohibited provisions of contracts with contractors or educational management organizations.

1. A contract or a proposed contract between a charter school or a proposed charter school and a contractor or an educational management organization must not:

(a) Give to the contractor or educational management organization direct control of educational services, financial decisions, the appointment of members of the governing body, or the hiring and dismissal of an administrator or financial officer of the charter school or proposed charter school;

(b) Authorize the payment of loans, advances or other monetary charges from the contractor or educational management organization which are greater than 15 percent of the total expected funding received by the charter school or proposed charter school from the State Distributive School Account;

(c) Require the charter school or proposed charter school to prepay any fees to the contractor or educational management organization;

(d) Require the charter school or proposed charter school to pay the contractor or educational management organization before the payment of other obligations of the charter school or proposed charter school during a period of financial distress;

(e) Allow a contractor or educational management organization to cause a delay in the repayment of a loan or other money advanced by the contractor or educational management organization to the charter school or proposed charter school, which delay would increase the cost to the charter school or proposed charter school of repaying the loan or advance;

(f) Require the charter school or proposed charter school to enroll a minimum number of pupils for the continuation of the contract between the charter school or proposed charter school and the contractor or educational management organization;

(g) Require the charter school or proposed charter school to request or borrow money from this State to pay the contractor or educational management organization if the contractor or educational management organization will provide financial management to the charter school or proposed charter school;

(h) Contain a provision which restricts the ability of the charter school or proposed charter school to borrow money from a person or entity other than the contractor or educational management organization;

(i) Provide for the allocation to the charter school or proposed charter school of any indirect cost incurred by the contractor or educational management organization;

(j) Authorize the payment of fees to the contractor or educational management organization which are not attributable to the actual services provided by the contractor or educational management organization;

(k) Allow any money received by the charter school or proposed charter school from this State or from the board of trustees of a school district to be transferred to or deposited in a bank, credit union or other financial institution outside this State, including money controlled by the contractor or educational management organization; or

(l) Except as otherwise provided in this paragraph, provide incentive fees to the contractor or educational management organization. A contract or a proposed contract may provide to the contractor or educational management organization incentive fees that are based on the academic improvement of pupils enrolled in the charter school.

2. As used in this section, "educational management organization" means a corporation, business, organization or other entity, whether or not conducted for profit, with whom a committee to form a charter school or the governing body of a charter school, as applicable, contracts to assist with the operation, management or provision and implementation of educational services and programs of the charter school or proposed charter school. The term includes a corporation, business, organization or other entity that directly employs and provides personnel to a charter school or proposed charter school.

(Added to NRS by 2011, 2356)

National Alliance for Public Charter School

Education Service Provider

A wide variety of education service providers have played important roles in opening and operating public charter schools. Just as the model law contemplates a wide variety of applicants but rigorous approval processes; it takes a liberal view of potential education service providers held accountable through contracts:

"An 'education service provider' means a for-profit education management organization, non-profit charter management organization, school design provider, or any other partner entity with which a public charter school intends to contract for educational design, implementation, or comprehensive management."

Revolving Loan Account

NRS 386.576 Creation; investment; credit of interest and income; deposit of money; payment of claims; acceptance of gifts and grants.

1. The Account for Charter Schools is hereby created in the State General Fund as a revolving loan account, to be administered by the Department.

2. The money in the Account must be invested as money in other state accounts is invested. All interest and income earned on the money in the Account must be credited to the Account. Any money remaining in the Account at the end of a fiscal year does not revert to the State General Fund, and the balance in the Account must be carried forward.

3. All payments of principal and interest on all the loans made to a charter school from the Account must be deposited with the State Treasurer for credit to the Account.

4. Claims against the Account must be paid as other claims against the State are paid.

5. The Department may accept gifts, grants, bequests and donations from any source for deposit in the Account.

(Added to NRS by 2001, 3124; A 2011, 446)

NRS 386.577 Authorized uses of money in Account; limitation.

1. After deducting the costs directly related to administering the Account for Charter Schools, the Department may use the money in the Account for Charter Schools, including repayments of principal and interest on loans made from the Account, and interest and income earned on money in the Account, only to make loans at or below market rate to charter schools for the costs incurred:

(a) In preparing a charter school to commence its first year of operation; and

(b) To improve a charter school that has been in operation.

2. The total amount of a loan that may be made to a charter school in 1 year must not exceed $25,000.

(Added to NRS by 2001, 3124)

NRS 386.578 Application for loan; requirements of contract for loan; regulations.

1. If the governing body of a charter school has a written charter issued pursuant to NRS 386.527, the governing body may submit an application to the Department for a loan from the Account for Charter Schools. An application must include a written description of the manner in which the loan will be used to prepare the charter school for its first year of operation or to improve a charter school that has been in operation.

2. The Department shall, within the limits of money available for use in the Account, make loans to charter schools whose applications have been approved. If the Department makes a loan from the Account, the Department shall ensure that the contract for the loan includes all terms and conditions for repayment of the loan.

3. The State Board:

(a) Shall adopt regulations that prescribe the:

(1) Annual deadline for submission of an application to the Department by a charter school that desires to receive a loan from the Account; and

(2) Period for repayment and the rate of interest for loans made from the Account.

(b) May adopt such other regulations as it deems necessary to carry out the provisions of this section and NRS 386.576 and 386.577.

(Added to NRS by 2001, 3124)

NRS 386.550 Operation: General conditions; limitation on programs of distance education.
p) Except as otherwise provided in this paragraph, a charter school that is sponsored by the State Board of Education may provide instruction to students at satellite facilities located in more than one county provided that:

(1) The charter school informs the school's sponsor when opening a satellite facility;
(2) The program of instruction is consistent with the schools written charter; and
(2) The students are given the same access to resources and academic offerings; and
(3) The governing body shall provide access to public meetings at all satellite facilities; and

NRS 386.655 Operation of system; compliance with federal law governing release and confidentiality of records.

At the request of another public school, without limitation, a charter school, except as otherwise provided in 20 U.S.C. § 1232g(a) and any other applicable federal law, a public school, including, without limitation, a charter school, shall release personally identifiable information without prior written consent of the parent if said information comes under the heading of "Directory Information." "Directory Information," may include, but is not limited to: student's name, address, and telephone listing.

(a) "Directory Information" shall be released to a public school, including without limitation, a charter school, provided the following prerequisites have been met:
   (1) The type of personally identifiable information it has designated as directory information;
   (2) The parent's right to refuse to let the school designate any or all types of information about the student as directory information; and

The period of time within which the parent has to notify the school in writing that he or she does not want any or all of those types of information about the student designated as "Directory Information."

NRS 386.5515 Operation: Eligibility for available money for facilities for charter schools that meet certain conditions; requirements for performance audit; exemption from annual performance audit; quarterly financial report.

2. A charter school that satisfies the requirements of subsection 1 shall submit to a performance audit as required by the Department one time every 5 years. The sponsor of the charter school and the Department shall not request a performance audit of the charter school more frequently than every 5 years without reasonable evidence of noncompliance in achieving the educational goals and objectives of the charter school based upon the annual report submitted to the Department pursuant to NRS 386.610. If the charter school no longer satisfies the requirements of subsection 1 or if reasonable evidence of noncompliance in achieving the educational goals and objectives of the charter school exists based upon the annual report, the charter school shall, upon written notice from the sponsor, submit to an annual performance audit. Notwithstanding the provisions of paragraph (b) of subsection 1, such a charter school:

STATE PUBLIC CHARTER SCHOOL AUTHORITY

SUPPORTING DOCUMENT

S U B J E C T: Discussion and possible recommendations for future action related to items discussed during the Annual Retreat

/ /	Public Workshop
/ /	Public Hearing
/ /	Consent Agenda
/ /	Regulation Adoption
/ /	Approval
/ /	Appointments
/ x/	Information
/ x/	Action

MEETING DATE: May 4, 2012

AGENDA ITEM: 7

NUMBER OF ENCLOSURE(S):

PRESENTER(S): Kathleen Conaboy, President State Public Charter School Authority.

RECOMMENDATION: The Authority provide staff with direction for any future action related to items discussed during the Annual Retreat

FISCAL IMPACT:

BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):

LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES): 30 mins

BACKGROUND:

SUBMITTED BY: _____

STATE PUBLIC CHARTER SCHOOL AUTHORITY

SUPPORTING DOCUMENT

S U B J E C T: Discussion and possible action to authorize Authority staff to solicit proposals from contractors to facilitate and lead the collaborative development of a strategic plan and mission statement.

/ /	Public Workshop
/ /	Public Hearing
/ /	Consent Agenda
/ /	Regulation Adoption
/ /	Approval
/ /	Appointments
/ x/	Information
/ x /	Action

MEETING DATE: May 4, 2012
AGENDA ITEM: 8
NUMBER OF ENCLOSURE(S):

PRESENTER(S): Steve Canavero, President State Public Charter School Authority.

RECOMMENDATION: Authorize Authority staff to solicit proposals from contractors to facilitate and lead the collaborative development of a strategic plan and mission statement.

FISCAL IMPACT:

BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):

LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES): 30 mins

BACKGROUND: See Authority Support Document

SUBMITTED BY: _____

the fund FOR AUTHORIZING EXCELLENCE

STRATEGIC PLAN GUIDELINES

For the past decade, NACSA has worked with authorizing agencies that are effectively growing a sector of quality public education options. Those organizations that have strong strategic plans provide a roadmap and role for internal and external stakeholders involved. Because there are various types of planning processes, these guidelines have been prepared to clearly define the desired outcome at the end of the grant period.

Strategic planning is a process designed to support leaders in being intentional about their goals and methods. Simply stated, strategic planning is a management tool, and like any management tool, it is used for one purpose only—to help an organization do a better job. Strategic planning can help an organization focus its vision and priorities in response to a changing environment and ensure that members of the organization are working toward the same goals. In short, our definition of strategic planning is as follows:

> Strategic planning is a systematic process through which an organization agrees on – and builds commitment among key stakeholders to – priorities that are essential to its mission and are responsive to the environment. Strategic planning guides the acquisition and allocation of resources to achieve these priorities.

Be strategic by intentionally responding to the current environment. Over time, organizations must assess and re-assess external and internal environmental factors that directly impact their work and they must take stock of the key stakeholders of various fields (advocacy, philanthropy, practice, etc...) that are essential to moving the vision and strategy for quality public schools forward.

Be systematic and data based through the gathering of new information to make decisions. If the authorizer has received a comprehensive evaluation based on NACSA's *Principles and Standards*, the plan must address how the organization will strengthen the areas needing improvement.

Set priorities that finalize a clear direction and goals for the organization. Through the planning process, long lists of current and potential issues arise. It is tempting to want to plan to address every item. Time, energy and resources are scarce and this is when prioritization in the planning process is essential.

Build commitment by engaging key stakeholders. Strategic plans can be a powerful mechanism to engage individuals and create buy-in. Stakeholders will see their specific role and contribute to advancing the vision.

EXAMPLE

Guide resource acquisition and allocation. It takes people and resources to advance and realize a vision. The plan must appropriately align resources to the priorities and be realistic on how the resources will be acquired.

The end of the grant period will culminate with the submission of a final strategic plan that will define how the grantee will improve authorizer practice that is in alignment with NACSA's *Principles and Standards*; and how they plan to increase the support (stakeholder and financial) for the growth of quality public education options for the students and families of their locality. The elements of the final strategic plan will include (but will not be limited to) the following:

Core elements

- Vision and mission statements
- Multi-year goals
- Realistic and measureable outcomes/benchmarks
- Defined and aligned personnel

Agency Capacity

- *Organizational structures.* Policies that define the role of the governing board and the external relationships must be outlined. This provides clear lines of authority to safeguard the authorizer from conflicts of interest and political influence
- *Human resources.* Strong authorizing agencies have competent and talented leadership. The strategic plan addresses the recruitment and development of such talent.
- *Financial resources.* The strategic plan not only determines the financial needs of the organization but how they will access, raise, and deploy them.

Quality Authorizing Practices*

- Comprehensive, rigorous application process
- Performance contracting
- Ongoing oversight and evaluation
- Renewal decision making

EXAMPLE

NACSA advises that all key personnel involved in developing the grantee's strategic plan review these guidelines and NACSA *Principles and Standards*.

NACSA's* ***Principles &Standards* *provide further definition and guidance on these core practices.*

Charter School Association of Nevada – Resolution # 001

A Resolution of the Charter School Association of Nevada (CSAN) Board of Trustees (The Association) - Urging the State Public Charter School Authority Board to Support a Collaborative Effort in Developing Positive Core Principles, a Mission, and an Overall Strategic Framework for the State Public Charter School Authority during the next six to eight months

WHEREAS, The positive core principles and mission matter to more than 35 charter schools and the education of more than, 14,000 elementary/middle/secondary charter school students, and 2.5 million residents in Nevada; and

WHEREAS, The term *"support a collaborative effort in developing positive core principles, a mission, and an overall strategic framework"* are the ideas, beliefs, values, resources, and methods used to allow for the development of ways for a network of support from all stakeholders – parents, students, schools, businesses, colleges, community and faith-based organizations, elected officials – to bring about the importance of a quality charter school movement in the State of Nevada and promoting model sponsorship; and

WHEREAS, Charter schools are given the freedom and flexibility to operate independently in exchange for higher accountability when showing support for quality standards built within a frameworks that assists, develops, guides, monitors, and supports schools to independence and resourcefulness – to preserve the mission of each school while allowing for growth, development, and innovation towards better solutions to education; and

WHEREAS, Educational reform efforts provide quality standards showing value to the business community with students that are college and career-ready; and

WHEREAS, Now, therefore, be it

RESOLVED, this 22nd day of March, 2012, by the Board of Trustees, Charter School Association of Nevada, that during the next six to eight months support a collaborative effort in developing positive core principles, a mission, and an overall strategic framework for the State Public Charter School Authority.

PASSED, APPROVED AND ADOPTED this twenty second day of March 2012.

CHARTER SCHOOL ASSOCIATION OF NEVADA

John Hawk, President

STATE PUBLIC CHARTER SCHOOL AUTHORITY

SUPPORTING DOCUMENT

S U B J E C T: Discussion and possible action identifying future agenda items

/ /	Public Workshop
/ /	Public Hearing
/ /	Consent Agenda
/ /	Regulation Adoption
/ /	Approval
/ /	Appointments
/ x/	Information
/ x /	Action

MEETING DATE: May 4, 2012
AGENDA ITEM: 9
NUMBER OF ENCLOSURE(S):

PRESENTER(S): Kathleen Conaboy, President State Public Charter School Authority.

RECOMMENDATION:

FISCAL IMPACT:

BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):

LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES): 15 mins

BACKGROUND:

SUBMITTED BY: _____