



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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## LEGAL UPDATE

March 26, 2019

**To: Superintendents, Member School Districts (K-12)**  
**From: Robert J. Henry, Of Counsel**  
**Subject: Charter Schools – Major New Governance Requirements  
Regarding Open Meeting Laws; California Public Records Act;  
Political Reform Act; and Conflict of Interest Laws (SB 126)  
Memo No. 08-2019 - REVISED**

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In our Legal Update Memo No. 02-2019 (January 16, 2019), we summarized an advisory opinion from the California Attorney General regarding charter schools being subject to those “public integrity” statutes noted above. Any doubts about the Attorney General’s advisory opinion have now been resolved by recently-enacted legislation referred to as SB 126. (See copy attached.)

Effective January 1, 2020, newly-enacted SB 126 adds Education Code section 47604.1 to the Charter Schools Act of 1992. Charter schools that are operated under Education Code section 47604 by or as a “nonprofit public benefit corporation” shall be subject to the following provisions of existing law: The Ralph M. Brown Act; The California Public Records Act; Government Code section 1090 et seq; and The Political Reform Act of 1974.

These four “public integrity” statutes are well known to school districts in California, but many of the so called “independent” charter schools that are managed by “nonprofit public benefit corporations” will need to get ready to comply with these formidable new governance requirements.

There are several unique aspects of new Education Code section 47604.1 that deserve further comment:

1. Charter schools that are operated as a “dependent” charter of a school district or county office of education are not subject to newly-enacted Education Code section 47604.1 because “dependent” charter schools are managed by a chartering agency already subject to the governance rules noted above.



2. Although independent charter schools that are not managed by a nonprofit public benefit corporation are not subject to section 47604.1, they may be subject to the four statutory schemes noted above either because the charter was granted on the condition of complying with these rules or as noted by the California Attorney General, in an opinion referenced above. (See Legal Update Memo 02-2019.)
3. The “governing body” of an entity that manages two or more charter schools that are not located in the same county “shall audio record, video record, or both all the board meetings and post the recordings on each charter school’s internet website.”

Recommendations:

1. If your school district or county office of education is the chartering agency of an independent charter school that is managed by a “nonprofit public benefit corporation” you should provide appropriate charter school representatives with a copy of SB 126 as soon as possible.
2. Thereafter, your school district will need to exercise sufficient oversight to make sure that the charter school is being managed in conformance with this new law.

Please contact our office with questions regarding this Legal Update or any other legal matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

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## Senate Bill No. 126

### CHAPTER 3

An act to add Section 47604.1 to the Education Code, relating to charter schools.

[Approved by Governor March 5, 2019. Filed with Secretary of State March 5, 2019.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 126, Leyva. Charter schools.

(1) The Ralph M. Brown Act requires that all meetings of the legislative body, as defined, of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized. The Bagley-Keene Open Meeting Act requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend.

This bill would expressly state that charter schools and entities managing charter schools are subject to the Ralph M. Brown Act, unless the charter school is operated by an entity governed by the Bagley-Keene Open Meeting Act, in which case the charter school would be subject to the Bagley-Keene Open Meeting Act, except as specified.

This bill would require specified charter schools or entities managing charter schools to hold meetings in specified locations. The bill would prohibit a meeting of the governing body of a charter school to discuss items related to the operation of the charter school from including the discussion of any item regarding an activity of the governing body that is unrelated to the operation of the charter school.

(2) The California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless the records are exempt from disclosure.

This bill would expressly state that charter schools and entities managing charter schools are subject to the California Public Records Act, except as specified.

(3) Existing law prohibits certain public officials, including, but not limited to, state, county, or district officers or employees, from being financially interested in any contract made by them in their official capacity or by any body or board of which they are members, except as provided.

This bill would expressly state that charter schools and entities managing charter schools are subject to these provisions, except that the bill would provide that an employee of a charter school is not disqualified from serving as a member of the governing body of the charter school because of that employment status. The bill would require a member of the governing body of a charter school who is also an employee of the charter school to abstain

from voting on, or influencing or attempting to influence another member of that body regarding, any matter uniquely affecting that member's own employment.

(4) The Political Reform Act of 1974 requires every state agency and local governmental agency to adopt a conflict-of-interest code, formulated at the most decentralized level possible, that requires designated employees of the agency to file statements of economic interest disclosing any investments, business positions, interests in real property, or sources of income that may foreseeably be affected materially by any governmental decision made or participated in by the designated employee by virtue of that employee's position.

This bill would expressly state that charter schools and entities managing charter schools are subject to the Political Reform Act of 1974, except as specified.

*The people of the State of California do enact as follows:*

SECTION 1. Section 47604.1 is added to the Education Code, to read:

47604.1. (a) For purposes of this section, an "entity managing a charter school" means a nonprofit public benefit corporation that operates a charter school consistent with Section 47604. An entity that is not authorized to operate a charter school pursuant to Section 47604 is not an "entity managing a charter school" solely because it contracts with a charter school to provide to that charter school goods or task-related services that are performed at the direction of the governing body of the charter school and for which the governing body retains ultimate decisionmaking authority.

(b) A charter school and an entity managing a charter school shall be subject to all of the following:

(1) The Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), except that a charter school operated by an entity pursuant to Chapter 5 (commencing with Section 47620) shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) regardless of the authorizing entity.

(2) (A) The California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(B) (i) The chartering authority of a charter school shall be the custodian of records with regard to any request for information submitted to the charter school if either of the following apply:

(I) The charter school is located on a federally recognized California Indian reservation or rancheria.

(II) The charter school is operated by a nonprofit public benefit corporation that was formed on or before May 31, 2002, and is currently operated by a federally recognized California Indian tribe.

(ii) This subparagraph does not allow a chartering authority to delay or obstruct access to records otherwise required under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(3) Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code.

(4) (A) The Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code).

(B) For purposes of Section 87300 of the Government Code, a charter school and an entity managing a charter school shall be considered an agency and is the most decentralized level for purposes of adopting a conflict-of-interest code.

(c) (1) (A) The governing body of one charter school shall meet within the physical boundaries of the county in which the charter school is located.

(B) A two-way teleconference location shall be established at each schoolsite.

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

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

(3) (A) For a governing body of an entity managing one or more charter schools located within the same county, the governing body of the entity managing a charter school shall meet within the physical boundaries of the county in which that charter school or schools are located.

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

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

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

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

(5) This subdivision does not limit the authority of the governing body of a charter school and an entity managing a charter school to meet outside the boundaries described in this subdivision if authorized by Section 54954 of the Government Code, and the meeting place complies with Section 54961 of the Government Code.

(d) Notwithstanding Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code, an employee of a charter school shall not be disqualified from serving as a member of the governing body of the charter school because of that employee's

employment status. A member of the governing body of a charter school who is also an employee of the charter school shall abstain from voting on, or influencing or attempting to influence another member of the governing body regarding, all matters uniquely affecting that member's employment.

(e) To the extent a governing body of a charter school or an entity managing a charter school engages in activities that are unrelated to a charter school, Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code, the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code), the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), and the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code) shall not apply with regard to those unrelated activities unless otherwise required by law.

(f) A meeting of the governing body of a charter school to discuss items related to the operation of the charter school shall not include the discussion of any item regarding an activity of the governing body that is unrelated to the operation of the charter school.