



# **CCSA GOVERNANCE ACADEMY 2022**

**Part One: November 9 | 3:30 – 5:00**



# CCSA Governance Academy 2022: Part One



**John C. Lemmo**

Partner

Procopio

[john.lemmo@procopio.com](mailto:john.lemmo@procopio.com)

619.515.3294



**Julie Ashby Umansky**

VP, Legal Advocacy/Exec. Dir. Charter

Schools Legal Defense Fund

CCSA

[jumansky@ccsa.org](mailto:jumansky@ccsa.org)

619.993.8253

# Topics we'll cover today in Part One

- A. SB 126 and its effect on all this
- B. Roles and Responsibilities of Board Members and CEO
- C. Running public meetings (Brown Act)
- D. Questions?

# Topics we'll cover Thursday in Part Two

- A. SB 126 and its effect on all this
- B. Public Records
- C. Duty of Care (informed decision-making)
- D. Duty of Financial Oversight
- E. Duty of Loyalty (conflicts, confidentiality)
- F. Questions?

# SB 126

- The charter “transparency” bill became effective January 1, 2020
- Applies to all charter schools and “entities managing charter schools”
  - Brown Act (plus extras), Public Records Act, conflict of interest rules under Political Reform Act and Gov. Code 1090, “incompatible” offices
  - We’ll cover more specifics when we hit each topic

# “Entity Managing a Charter School” and SB 126

- **You’re likely an “entity managing a charter school” under SB 126 if your entity does or provides any of the following:**
  - “(i) Nominating, appointing, or removing board members or officers of the charter school.
  - (ii) Employing, supervising, or dismissing employees of the charter school, including certificated and non-certificated school personnel.
  - (iii) Managing the charter school’s day-to-day operations as its administrative manager.
  - (iv) Approving, denying, or managing the budget or any expenditures of the charter school that are not authorized by the governing body of the charter school.
  - (v) Providing services to a charter school before the governing body of the charter school has approved the contract for those services at a publicly noticed meeting.”

# Roles and Responsibilities of Board and Management

Independent charter schools are run by nonprofit corporations:

- Board of Directors is the governing body with legal responsibility for the charter school. Typically, the Board is responsible for providing fiscal accountability by approving and monitoring the budget.

# Roles and Responsibilities of Board and Management

Board ensures long-term viability of the organization

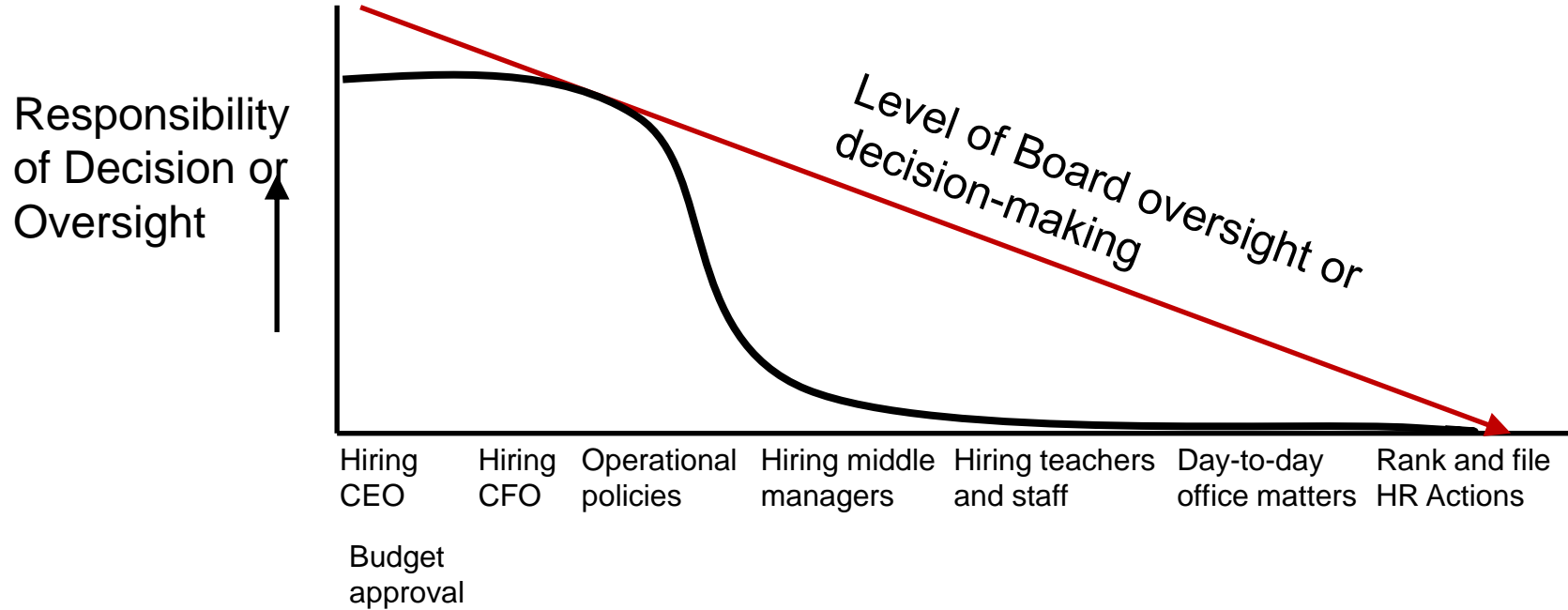
- Ultimately responsible for how the schools are doing
- Board members have a duty to support the overall health and performance of the charter
- Board monitors school performance and other data to inform its decisions
- Board hires, compensates, and evaluates CEO



# Roles and Responsibilities of Board and Management

- Board approves the “big stuff”:
  - Annual budget
  - Major educational and operational policies
  - Major contracts (leases, loans)
  - Reviews and monitors financial policies and procedures, budget, and finances to inform and evaluate resource allocation
  - Hires and evaluates CEO (and CFO?)
  - Emergency authorization?
  - Reductions in staff / layoffs?
  - Borrowing/debt
- CEO:
  - In charge of day-to-day operations
  - Selection of all other staff

# Level of Board Involvement



# Brown Act (Open Meeting Law)

## Holding meetings

- SB 126 mandates Brown Act compliance
- The Brown Act is the state open meeting law for local government agencies—the Board’s deliberations and actions must be conducted in an open and public manner
- Boards take action at “meetings” ... so what is a “meeting”?
  - “Any congregation of a majority of the members of a legislative body ... to hear, discuss, or deliberate, or take action on any item.”
  - You may not, “outside a meeting ... use a series of communications ... directly or through intermediaries, to discuss, deliberate, or take action ....” (Gov. Code sec. 54952.2)
- Avoid inadvertent serial meetings through email, text, social media communications.
- We have non-charter business. Do we need to comply with Brown Act for that, too?
  - No, if “unrelated to the operation of the charter school.” (SB126)

# Holding meetings

## Brown Act “types” of meetings

- “Regular” meetings require 72 hours posting of notice
- “Special” meetings require 24 hours notice
- Teleconferencing (if no public health or AB2449 concern)
  - Notice in agenda
  - Quorum must be physically present within “jurisdiction”
  - Identify teleconference location
  - Roll call vote

# Holding meetings

- Meetings in an “emergency” situation allowed with less than 24-hours notice
  - Brown Act defines an emergency as:
    - "work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both," as determined by board.
  - Absent a "dire" emergency, must attempt to contact any news media who have previously requested such notice by telephone at least one hour before the meeting.
  - Minutes of the meeting, a list of notified persons and actions taken must be posted for 10 days in a public place as soon as possible.
  - Consult with attorney if you can

# Holding meetings

- Limited exceptions to public notice (*i.e.*, **not** a “meeting”):
  - Conference or public gathering that involves a discussion of issues of general interest (e.g., CCSA annual conference)\*
  - Open community meeting or another agency’s public meeting\*
  - Social or ceremonial occasions (e.g., commencement or holiday party)\*
- What about annual board retreat, strategic planning sessions, board study sessions?
  - These are all “meetings”

\* *so long as the directors do not discuss agency/school business amongst themselves*

# Holding meetings

- Brown Act limits scope of meeting to posted agenda:
    - Brief general description of business to be transacted (20 words or less)
    - Post in publicly accessible place at/near location
    - Don't create “information only” vs. “action” items if you want flexibility
    - Restrictions on adding items to agenda\*
  - Must post agenda on website
    - “One click” rule—don't ignore this easy rule!
  - Record how members vote
- \* **Tip**: If you miss 72-hour posting deadline to include an item on regular agenda, you can still post a special meeting agenda with 24 hours notice for same time and place.

# Board “Committee” meetings

- Brown Act applies to most committees created by board, even if advisory:
  - Applies to “standing” board committees (e.g., finance committee, audit committee, executive committee)
  - “Ad hoc” committees exempt
  - SB 126 teleconferencing rules do not apply to committees

**Tip:** Brown Act does not apply to non-board committees. The CEO can set up her/his own advisory teams instead, which can also inform and ultimately advise the board.



# Rules Under SB 126 regarding meeting locations and multi-site teleconferencing

- SB 126 imposes additional rules as part of Ed. Code for charters
- Board meeting location requirements vary depending on number of school sites and counties you operate in

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

\* Includes schoolsites and resource centers.

SB 126 teleconferencing rules do not apply to committees

# Holding meetings under AB 361 (ends Feb. 2023)

## AB 361 replaced 2020 Executive Orders

- Since March 2020, in-person and teleconferencing rules under Brown Act were suspended by Executive Order—but that expired September 2021.
- AB 361 provides “emergency” teleconferencing rules, through FEBRUARY 2023
  - Applies if governor declares state of emergency, and state or local health officials require or recommend social distancing
  - Requires regular findings (30-days) that social distancing still required or recommended, or about impact to safety of board members and presumably members of the public
  - Options if board doesn't meet monthly?

# AB 361 Requirements When State of Emergency

- AB 361 teleconferencing requires at least one of the following circumstances when board holds meeting during state of emergency:
  - (1) state or local officials recommend measures to promote social distancing, or
  - (2) board is meeting to determine whether meeting in person would pose “imminent risks to health or safety of attendees”, or
  - (3) board finds that meeting in person would pose “imminent risks to health or safety of attendees”
- If board chooses to meet in person, then it may follow the pre-pandemic board teleconferencing rules, and the SB 126 teleconferencing rules

# AB 361 Requirements When State of Emergency

- If conditions met, AB 361 suspends any express or implied requirement for the physical presence of board members for a quorum or of the public as a condition of participation in a public meeting.
  - Board members need not notice their teleconference/virtual locations
  - Local agencies must still give advance notice of, and post the agenda for, each public meeting according to the timeframes prescribed by the Brown Act and give notice of the means by which members of the public may observe the meeting and offer public comment.
  - New: public must be allowed opportunity to provide comments in “real time”

# New for 2023: AB 2449 Teleconferencing

- Allows individual board members to participate in meetings remotely during “emergency circumstances” (physical or family medical emergencies), or for “just cause,” including childcare or caregiving needs, contagious illness, a disability, or travel on official school business (or business for another agency they serve).
- Complicated compliance
  - board member must identify the reason they are participating remotely, without having to disclose any personal medical information.
  - A quorum of the board needs to attend the meeting from a single physical location,
  - the agency must provide a way for the public to remotely hear, visually observe, and comment during the meeting (either a two-way audiovisual platform, or a two-way telephonic service and a live webcasting of the meeting),
  - and the public must be able to comment via a call-in option, internet-based option and in-person.
  - Then, before any action is taken at the meeting, the board member who is participating remotely under AB 2449 must identify any adults who are in the same room, and their relationship to that person.
  - board member cannot participate remotely under these new rules for more than 3 consecutive months or 20% of the regular meetings during a calendar year.

# Holding meetings—Closed Sessions

- Brown Act limits “closed” sessions:
  - Statutory basis must be identified in agenda, such as ...
    - Litigation (identify matter)
    - Personnel evaluation, termination (identify position)
    - Collective bargaining strategy (identify designated reps, etc.)
    - Real estate negotiations (identify property, negotiator, etc.)
  - Not for budget discussions, general planning

# Holding meetings

- Rights of public:
  - Speak *before* action taken on any item (including closed session)
  - Publicly accessible location (with disabled access)
  - Public comment can (and should) be time-limited
  - At regular meeting to address board on something not on agenda
    - Non-agenda comment not required at special meetings, but you can allow if you want to
- Disruptive members of the public: SB 1100 (Effective 1/1/23)

# Noncompliance with Brown Act

- Who might care?
  - Your parents/community/stakeholders
  - Your authorizer
    - Think about issues on renewal
    - Compliance with annual reviews
  - Others?



# Practical Tips for Holding Virtual Meetings

- Are we still allowed to hold virtual meetings?
- Public Access
- Public Comment
  - “Real Time” under AB 361
- Control of Screen/Participants
  - Zoombombing
  - Electronically “clearing the room” if disrupted
- Tech training for board and staff

# The End

- Any questions about these topics?
- For CCSA members-only, find our governance resources, in our Member Portal. Contact your School Administrator for access, or email [help@ccsa.org](mailto:help@ccsa.org) for school access.

# Thank you!

# Questions?



**John C. Lemmo**

Partner

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