



A CALIFORNIA DISTINGUISHED SCHOOL

BOARD OF DIRECTORS REGULAR MEETING MINUTES

Tuesday, March 17, 2009
5:00 PM, LIBRARY

I. PRELIMINARY:

A. CALL TO ORDER: - Ms. Rene Rodman 5:05PM

B. ROLL CALL – Ms. Rene Rodman

Members Present:

Amy Dresser Held (arrived 5:10)

Darcy Stamler
(abst)

Dave Suarez

John Callas

James Paleno

John Riley

Patrice Fisher

Rene Rodman

Steve Klima

Torino Johnson (arrived 5:30)

Victoria Francis

Ex-officio

Greg Wood

Martin Griffin

Ramin Badiyan

C. APPROVAL OF MINUTES FROM BOARD MEETINGS ON JANUARY 20, 2009, FEBRUARY 10, 2009 AND FEBRUARY 17, 2009. See final approved version at www.palihigh.org.

- Ms. Darcy Stamler moved that the Board approve the January 20, 2009 minutes as amended in the meeting. Mr. John Callas seconded the motion.

BOARD ACTION:

9 – yes (Ms. Darcy Stamler, Mr. Dave Suarez, Mr. James Paleno, Mr. John Callas, Dr. John Riley, Ms. Patrice Fisher, Mrs. Rene Rodman, Mr. Steve Klima, and Ms. Victoria Francis)

2 – absent (Ms. Amy Dresser Held and Mr. Torino Johnson)

- The approval of the February 10th Board minutes was tabled until the next meeting.
- Ms. Stamler moved that the Board approve the February 17, 2009 minutes as amended in the meeting. Ms. Victoria Francis seconded the motion.

BOARD ACTION:

9 – yes (Ms. Amy Dresser Held, Ms. Darcy Stamler, Mr. Dave Suarez, Mr. John Callas, Dr. John Riley, Ms. Patrice Fisher, Mrs. Rene Rodman, Mr. Steve Klima, and Ms. Victoria Francis)

1 – abstained (Mr. James Paleno)

1 – absent (Mr. Torino Johnson)

II. PUBLIC COMMENTS:

Non-agenda items: No individual presentation shall be for more than two (2) minutes and the total time for this purpose shall not exceed sixteen (16) minutes. Board members will not respond to presentations and no action can be taken. However, the Board may give direction to staff following a presentation. Use of names of individuals should be avoided when referring to accusations or wrongdoing (names should be presented to the Executive Director for follow-up action). Speakers may choose to speak during the public comment segment and/or at the time an agenda item is presented.

- Ms. Joi Tanita brought up concerns about the school police officer's office change. She also voiced dissatisfaction with the process by which the Operations Manager was hired.
- Ms. Minh Ha Ngo reported on Pali's Academic Decathlon's 7th place showing at the California State championships and expressed thanks to the school for its support of the team. She also noted that a total of 15 medals were won by team members, the largest number in Pali's history for this competition.

III. ACTION ITEMS:

A. DISCUSSION AND ACTION ON FINANCE AND BUDGET COMMITTEE RECOMMENDATIONS TO REDUCE BUDGET FOR 2008-2009 AND PREPARE BUDGET FOR 2009-2010.

- Mr. Greg Wood reported on the 2008-09 school year budget shortfall, which is due to the State's mid-year budget cut. He discussed the Finance and Budget Committee's recommendation to freeze the Textbook budget for the remainder of the school year to help mitigate the shortfall. He noted that the freeze will yield a savings of approximately \$125,000. He also noted that Federal Stimulus Package funds and the May 2009 pending ballot measures might favorably affect the PCHS budget. With a Textbook budget freeze, teachers will still be able to put requests in for textbook purchases which would be decided on a case by case basis. Additionally, the Library will still be able to order books due to its ongoing need.
- Ms. Patrice Fisher moved that the Board accept the recommendation of the Budget and Finance Committee to freeze the Textbook Budget, with the exception of the Library. Mr. Callas seconded the motion.

BOARD ACTION:

11 – yes (Ms. Amy Dresser Held, Ms. Darcy Stamler, Mr. Dave Suarez , Mr. James Paleno, Mr. John Callas, Dr. John Riley, Ms. Patrice Fisher, Mrs. Rene Rodman, Mr. Steve Klima, Mr. Torino Johnson, and Ms. Victoria Francis)

B. DISCUSSION AND ACTION TO FORM A COMMITTEE TO REVIEW GOALS ENUMERATED IN WASC ACTION PLAN AND PCHS CHARTER AS A PRECURSOR TO UPCOMING WASC VISIT, STRATEGIC PLANNING AND DEVELOPMENT OF ENDS/OUTCOME POLICIES.

- Mr. Paul Mittelbach proposed re-establishing a standing Steering / Innovations / Restructuring / Strategic Planning Committee and presented a number of support documents.
- Ms. Rene Rodman noted that a committee to field innovative ideas for academic programs and school operations could be formed by staff and the administration without Board approval. She suggested that Board members review the WASC and charter renewal documents as a first step in developing a comprehensive list of school outcomes and a strategic plan. She suggested that this work be started at a board retreat in the near future and offered to include further discussion of this on the April 21 Board agenda.

- No action was taken by the Board.

C. DISCUSSION AND ACTION ON A RESOLUTION IN ACCORDANCE WITH CALIFORNIA EDUCATION CODE, SECTION 44262, TO RECOMMEND ISSUANCE OF A CREDENTIAL BASED ON EMINENCE TO RICK STEIL IN THE SUBJECT OF PHOTOGRAPHY.

- Ms. Amy Dresser Held presented a portfolio of Mr. Rick Steil's work as a professional photographer and noted that his career has been extensive. She also noted that he is currently pursuing his teaching credential. If he is issued a Credential Based on Eminence it will apply only to his employment at PCHS. She also said that the standards by which the State issues a Credential of Eminence are typically very high, and that very few of these kinds of credentials are issued.
- Mr. Steve Klima moved that the Board recommend the issuance of a Credential Based on Eminence to Mr. Rick Steil in the Subject of Photography. Mr. James Paleno seconded the motion.

BOARD ACTION:

11 – yes (Ms. Amy Dresser Held, Ms. Darcy Stamler, Mr. Dave Suarez , Mr. James Paleno, Mr. John Callas, Dr. John Riley, Ms. Patrice Fisher, Mrs. Rene Rodman, Mr. Steve Klima, Mr. Torino Johnson, and Ms. Victoria Francis)

D. DISCUSSION AND ACTION ON POOL PROJECT CONTRACT BID.

- Ms. Held said that DSA approval to begin pool construction came last week. She also said that the Pool Committee's initial estimate of annual operating costs of \$500,000 a year has been revised to approximately \$375,000 due to a reduction in PCHS staffing required for the pool (some staffing will be provided by user groups as required by law). Mr. Wood said that the Pool Committee has revised upwards the estimate of the pool's annual operating surplus to approximately \$100,000. The new projection takes into account conservative estimates of pool usage by outside groups during non-school time. Mr. Wood noted that fundraising to date has yielded \$2.9 million pledged of which approximately \$2.8 million is in the bank.
- Action on the Pool Project Contract Bid was delayed until after the meeting's Closed Session.

E. APPROVAL OF VICENTI LLOYD & STUTZMAN TO AUDIT THE FINANCIAL RECORDS OF PCHS FOR THE 2008-2009 SCHOOL YEAR.

- Mr. Wood said that this audit firm's current bid of \$17,100 is slightly more than what they charged for the 2007-2008 audit due to changes in charter school audit requirements which make the PCHS audit and tax returns more complicated than in the past.
- Ms. Stamler moved that the Board approve Vicenti Lloyd and Stutzman to audit the financial records of PCHS for the 2008-2009 School Year, for a fee no greater than \$17,100, and authorize Mr. Wood to work to finalize the contract for a lesser amount. Dr. John Riley seconded the motion.

BOARD ACTION:

11 – yes (Ms. Amy Dresser Held, Ms. Darcy Stamler, Mr. Dave Suarez , Mr. James Paleno, Mr. John Callas, Dr. John Riley, Ms. Patrice Fisher, Mrs. Rene Rodman, Mr. Steve Klima, Mr. Torino Johnson, and Ms. Victoria Francis)

F. DISCUSSION AND ACTION ON COMMUNITY SERVICE PROGRAM AND REQUIREMENT OF COMMUNITY SERVICE FOR GRADUATION.

- Two students made public comments. Both Mr. Ryan Steinberg and Mr. Dexter O'Connell voiced dissatisfaction with the current Community Service Program.

- Mrs. Ann Davenport reported that at the direction of Principal, Mr. Martin Griffin, she was putting together a Community Service Program Appeals Committee.
- Mr. Dave Suarez raised several concerns about the Community Service Program and the Community Service requirement for graduation and participation in school-wide activities. The Board discussed the need to answer these and other student concerns. There was also discussion among the Board of directing the administration to immediately address the issues before taking Board action.
- Mr. Suarez moved for the immediate suspension of the Community Service requirement for the Class of 2009 and for the indefinite suspension of the program until a legal policy can be adopted and a committee formed to: 1) oversee the process of developing a set of fair and equitable rules for the Program and 2) oversee student appeals. Mr. Klima seconded the motion.

BOARD ACTION:

3- yes (Ms. Darcy Stamler, Mr. Dave Suarez, and Mr. Steve Klima)

8 – no (Ms. Amy Dresser Held, Mr. James Paleno, Mr. John Callas, Dr. John Riley, Ms. Patrice Fisher, Mrs. Rene Rodman, Mr. Torino Johnson, and Ms. Victoria Francis)

- Ms. Stamler moved that Mr. Griffin and Mrs. Davenport finalize an Appeals Committee for the Community Service Program, research the legality of the Community Service Program, and report those findings back to the Board no later than the next regular Board meeting of April 21. Mr. Callas seconded the motion.

BOARD ACTION:

11 – yes (Ms. Amy Dresser Held, Ms. Darcy Stamler, Mr. Dave Suarez , Mr. James Paleno, Mr. John Callas, Dr. John Riley, Ms. Patrice Fisher, Mrs. Rene Rodman, Mr. Steve Klima, Mr. Torino Johnson, and Ms. Victoria Francis)

G. DISCUSSION AND ACTION ON EMPLOYMENT CONTRACT LIMITS.

- Mr. Suarez brought up the issue of employment contracts and expressed that new contracts should be limited to one year in length.
- After much discussion about employment contracts and the extent to which the Board should be involved with contracts, and school hiring practices, it was decided that the issue be further explored in a later Board meeting or retreat devoted to policy issues.
- No action was taken.

H. DISCUSSION AND ACTION ON EXECUTIVE DIRECTOR EXPENSE REPORTS (STANDING ITEM).

- Ms. Held presented expenses of \$324.57 related to her lodging and expenses for the California Charter Schools Association Conference this month in Long Beach.
- Mr. Callas moved that the Board approve these expenses for the Executive Director. Mr. Paleno seconded the motion.

BOARD ACTION:

10 – yes (Ms. Darcy Stamler, Mr. Dave Suarez , Mr. James Paleno, Mr. John Callas, Dr. John Riley, Ms. Patrice Fisher, Mrs. Rene Rodman, Mr. Steve Klima, Mr. Torino Johnson, and Ms. Victoria Francis)

1 - abstained (Ms. Amy Dresser Held)

IV. DISCUSSION/INFORMATION ITEMS:

A. DISCUSSION OF HIRING PROCESS POLICY.

- As a continuation of the discussion and implementation of best board practices, the Board agreed at the February 17 meeting to begin work on a school hiring policy. Ms. Rodman led a discussion of the concerns that Board members have or have heard about the school's hiring process. The list included: adherence to laws, consistency, clearly defining and adherence to job descriptions and responsibilities, performance criteria in both the hiring interview and employment contract, confirmation of appropriate credentialing, establishing mechanisms for stakeholder input, employee manual sign-off by the candidate, and more. The discussion is to be continued at a subsequent board meeting or retreat.

B. UPDATE ON CONFLICT OF INTEREST POLICY AND FORM 700. (see attached Conflict of Interest Code)

- Mr. Wood distributed Form 700 to all Board members for signing for the current school year. He said that all future candidates for the Board will need to submit the form.
- Ms. Rodman referred to the revised PCHS Conflict of Interest Code in each member's meeting packet and directed the Board Secretary to start a Board Policy binder with this as the initial document.

C. CONFIRMATION OF NEXT MEETING FOR TUESDAY, APRIL 21 AT 4:00 PM IN THE LIBRARY.

V. ORGANIZATIONAL REPORTS:

This is a presentation of information concerning non-confidential matters which have occurred since the previous Board meeting.

A. Student Report – **Ramin Badiyan**

- Sadie Hawkins Day was successful.
- Pali is holding Green Week soon to beautify the campus.
- A carnival will be held at the end of the year.

B. Parent Report – **Julia O'Grady**

- Parent Advisory Committee – hosting a “Conversation with the English Dept.” on March 26.
- BOOSTER CLUB – February's Silent Auction netted \$89,000.

C. Faculty Report – **James Paleno/Dave Suarez/Steve Klima**

- Mr. Paleno reported that the teachers were happy to have been able to attend the Charter Schools Conference.
- Mr. Klima said that the issue of moving teachers' office space is a concern.
- Dave Suarez suggested creating a Teacher Award to be voted on by the teachers to acknowledge teachers helping each other.

D. Classified Staff Report – **Torino Johnson**

- Mr. Johnson said that he has been fielding complaints about the new sign-in procedure for classified staff, and noted that several people in the Special Education department have stated that they are being harassed and unfairly targeted by the policy.

E. Academic Principal's Report – **Martin Griffin**

- Today and tomorrow (3/17 and 3/18) are our testing days for the CAHSEE administration to all 10th graders.
- Our schools Academic Decathlon Team finished 7th in the state and received 15 medals.

Congratulations to Mr. Chris Lee, Ms. Minh Ha Ngo and the team for once representing PCHS well again.

- The drama department is opening the spring musical this week (3/20-21 and 3/26-28). They will be presenting the musical *Honk*.
- Our Village Nation program held its second impact assembly entitled “Keeping it Real,” focusing on student attitudes towards academic performance.

F. Executive Director’s Report – Amy Held

- Admissions – We have a record number of non Revere resident applicants (approximately 220 v. 50 in years past). We are estimating that at least half of Revere’s 8th grade class will be in the lottery March 26th.
- Negotiations with LAUSD are underway on multiple issues:
 - Special Education – LAUSD is proposing a 500% increase in the charge to charter schools to be part of their Special Education Local Plan Area (SELPA) to offset their encroachment on the general fund. Charters are working together to negotiate a fair charge.
 - Facilities – The conversion charters are close to having an MOU with LAUSD to be considered sole occupant users. The tentative agreement is fair and workable for all parties.
 - Health Benefits – The conversion charter school leaders are having weekly conference calls and waiting for clarity from LAUSD on their intentions/ability to continue selling us the benefits package.
- Charter conference– We had 100 school community members attend the staff and it the feedback seems to be that it was very valuable. We will be scheduling a time to gather, debrief and share what we learned in the coming week. We had multiple Pali presenters at the conference as Rose Gilbert winning the Hart Vision Legacy Award and a Pali senior winning a scholarship.
- Congrats to our Academic Decathlon Team that placed 7th in the State.
- HR Director Update – the selected candidate to serve as our HR Director pulled out of the process yesterday and has since indicated he’s reconsidering his decision. The committee is considering how to proceed.

G. Chief Business Officer’s Report – Greg Wood

- Enrollment - PCHS enrollment for the sixth month of the school year was 2,678 students enrolled and attending classes (2,669 students enrolled through month five 2007-8). The enrollment by grade level was: 787 students-9th; 650 students-10th; 630 students-11th and 611 students-12th. The ADA, which determines our level of funding, at the end of the fifth month of school was 2,596.0 or 96.1% (2,559 and 95.6% prior school year)of the enrolled students. The budgeted level of ADA for the full school year is 2,600. Current projections, based upon prior ADA history would indicate that full year ADA might be 2,592 based upon current attendance levels. This information has been used in projecting the current 2008-2009 School Budget
- Financial Reporting
- Budget Update
- 2008-2009 –
 - We have submitted our 2nd Interim Report to the CDE and LAUSD. Based upon the funding levels in place as of January 2009 (date of our report) we reported an increase in our Fund Balance of \$66,000. However, given the new and lower funding levels passed in late February 2009, our Fund Balance may be impacted by as much as \$700,000 in the current year and another \$300,000 next year (See attached detail

of 2nd Interim Report, Impact of February 2009 State Budget approval and Potential Impact of 2009-2010 Budget).

- Two outstanding items relating to the Budget are the Federal stimulus package which will favorably impact PCHS and ballot measures in May 2009 which, if approved, will favorably impact our funding.
- In the interim, the Budget & Finance committee & Administration continue to explore Revenue enhancing/Cost reduction strategies.
- 2009-2010 - The 2009-2010 Budget Package was released and is in process of being completed. Recipients have been informed of the budget concerns.
- Cafeteria - PCHS continues to compare favorably in terms of performance vs, 2007-2008. We are ahead of last year by approximately \$53,000
- ASB - Sadie Hawkins Dance at Magic Mountain was successful. The 2009-2010 ASB Budget process is being finalized this month. To date, the ASB is maintaining

H. Technology – **Maisha Cole Perri**

- No report given.

I. Human Resources – **Amy Held**

- See information in the Executive Director’s Report.

J. Standing Committee Reports:

- a. Communications – **Monica Iannessa**
 - Ms. Iannessa requested feedback on the Pali Positive Award program.
- b. Education Program – **Melinda Meinen**
 - No report given.
- c. Finance and Budget – **Greg Wood**
 - No report given.
- d. Operations/Facilities/Technology Committee – **Maisha Cole Perri**
 - No report given.
- e. Policy – **Julia O’Grady**
 - No report given.

VI. CLOSED SESSION: 9:10PM

A. BOARD CONSIDERATION OF POSSIBLE STUDENT EXPULSION: CASE #08/09-A

B. PERFORMANCE EVALUATIONS

Title: Director of Instruction

Title: Director of Student Services

Title: Athletic Director

Title: Principal

C. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

SIGNIFICANT EXPOSURE TO LITIGATION PURSUANT TO SUBDIVISION b OF SECTION 54956.9: TWO CASES

D. CONFERENCE WITH LABOR NEGOTIATOR PCHS Negotiator

EMPLOYEE ORGANIZATION: PESPU, UTLA

VII. PUBLIC SESSION: 10:10PM

No action was taken in closed session. The following actions were taken in open session:

A. BOARD CONSIDERATION OF POSSIBLE STUDENT EXPULSION: CASE #08/09-A

- Mr. Paleno moved that the Board accept the recommendation of the Expulsion Committee on Case #08/09-A. Mr. Suarez seconded the motion.

BOARD ACTION:

11 – yes (Ms. Amy Dresser Held, Ms. Darcy Stamler, Mr. Dave Suarez , Mr. James Paleno, Mr. John Callas, Dr. John Riley, Ms. Patrice Fisher, Mrs. Rene Rodman, Mr. Steve Klima, Mr. Torino Johnson, and Ms. Victoria Francis)

D. CONFERENCE WITH LABOR NEGOTIATOR PCHS Negotiator

EMPLOYEE ORGANIZATION: PESPU, UTLA

- Dr. Riley moved that the Board authorize the Executive Director to negotiate and enter into a contract with Sarlan, given that approximately 70% of projected funds needed to construct the pool have been pledged to date with most of that money already in the bank. Mr. Suarez seconded the motion.

BOARD ACTION:

11 – yes (Ms. Amy Dresser Held, Ms. Darcy Stamler, Mr. Dave Suarez , Mr. James Paleno, Mr. John Callas, Dr. John Riley, Ms. Patrice Fisher, Mrs. Rene Rodman, Mr. Steve Klima, Mr. Torino Johnson, and Ms. Victoria Francis)

VIII. CLOSED SESSION: 10:13PM

C. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

SIGNIFICANT EXPOSURE TO LITIGATION PURSUANT TO SUBDIVISION b OF SECTION 54956.9: TWO CASES

IX. PUBLIC SESSION: 11:16PM

C. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

SIGNIFICANT EXPOSURE TO LITIGATION PURSUANT TO SUBDIVISION b OF SECTION 54956.9: TWO CASES

- Dave Suarez left the room during the discussion and no action was taken.

X. ADJOURNMENT: 11:17PM

LAW OFFICES OF MIDDLETON, YOUNG & MINNEY, LLP

FEBRUARY 10, 2009

Rene Rodman, Board President VIA: EMAIL
Board of Directors
Palisades Charter High School
15777 Bowdoin St.
Pacific Palisades, CA 90272

Re: Conflicts of Interests Code & Related Questions

Dear Rene:

On behalf of the Palisades Charter High School (“PCHS”) Board of Directors (“Board”), and in anticipation of the Board’s meeting on February 17, 2009, you have asked our office for a legal opinion regarding the current law and best practices (from a legal perspective) related to conflicts of interest as to the following questions: (1) whether it is legally permissible for a teacher Board member to serve both on the PCHS Board and also as a participating member of UTLA’s negotiating team for purposes of negotiating against the Board; and (2) whether employee Board members may participate in discussions with the PCHS Board when it engages in (closed session) discussions, including negotiations strategy, as to other employee bargaining units not their own.

In connection with these questions, you have also forwarded the School’s most current conflict of interest policy to ensure it meets current legal standards.

SUMMARY

First, the Board’s current Conflict of Interest Code is legally compliant with the requirements of the Political Reform Act (Govt. Code sections 87100, et seq.).

Second, as to the questions presented, it is our opinion that an employee who serves on the PCHS Board may not lawfully serve on his or her respective unit’s bargaining team in negotiations against the Board. Regardless of our legal conclusion, we would not recommend that employee Board members participate on their respective union’s bargaining teams as, if allowed, this could lead to serious damage to the ability of PCHS Board members to work effectively as a Board and with the PCHS administration. Moreover, by way of best practices, I am unaware of any charter school Board which has allowed its Board members to participate in negotiations “against” the Board.

While unaddressed in detail here, your questions also raise possible legal issues under labor relations law. Specifically, an employee Board member participating on a bargaining team in negotiations against the PCHS Board may also be grounds for the PCHS Board to initiate an unfair labor practice charge against the affected union. Particularly, the union’s use of a PCHS Board member on its team may constitute bad faith bargaining. It could also increase the possibility that the participating Board member would utilize, or be viewed as utilizing, confidential Board information or bargaining strategy obtained from confidential meetings with the Board. There are also a number of other reasons this practice is discouraged ranging from appearances of impropriety under common law theories of conflicts of interest, to incompatible offices, to potential breaches of fiduciary duties and violations of the Brown Act. All of these laws carry potential civil and criminal liabilities for the individual board member involved as well as the School.

As to whether employee Board members may participate in closed session discussions regarding Board strategy as to negotiations with other units, we do not recommend this practice either for the same reasons stated herein regarding best practices and concerns under applicable law.

Accordingly, as to your two primary questions, we strongly recommend continuance of your current practice which will mitigate potential legal liability and maximize the public trust in the Board's integrity, as well as protect Board efficiency.

Factual Background

It is my understanding that the prior practice at PCHS has been that all bargaining unit employee Board members, including three (3) teachers and one (1) classified Board member, refrain from any participation in Board discussions in open or closed session related to labor negotiations. It is my further understanding that no board member has ever participated on any union negotiation team while serving as a member of the Board.

In analyzing the questions you raised, it is imperative to understand some basic facts related to the negotiations process. Namely, during the negotiations process, a team of the most senior PCHS administrators, minimally including the Executive Director, Chief Business Officer and Human Resources Director, must and do participate on the Board's bargaining team; the Board's negotiating team takes direction in confidence during closed sessions with the Board. In so doing, many hours are spent in negotiation meetings between the PCHS management team and the union's negotiations team potentially over several days. During these meetings, in some instances, subjects are discussed which can cause anger, frustration, and unfortunately on occasion, a breakdown in communication between the bargaining teams. Thus, it is possible, that if a Board member is on the UTLA team, he or she could become angry with the Executive Director or other senior management personnel or vice versa.

Conflict of Interest Laws Generally

Generally, conflict of interest laws spring from a desire by the Legislature and the courts to ensure that those persons charged with conducting "the people's business" do so without any divided loyalties or personal benefit. In this regard, one court stated, "the duties of public office demand the absolute loyalty and undivided, uncompromised allegiance of the individual that holds the office." (*Thomson v. Call* (1985) 38 Cal. 3d 633, 448.)

Based upon these general tenets, the conduct of charter school officials is governed by the Political Reform Act ("PRA"). Since PCHS is organized and operated as a nonprofit public benefit corporation, Board members must also comply with the fiduciary duty requirements and restrictions on conflicts of interest that are imposed by the California Corporations Code. There are also other legal requirements not discussed herein which also may be at issue, such as the common law prohibition against the appearance of impropriety, as well as the incompatibility of activities doctrine.

The Political Reform Act of 1974

The PRA, as codified in Government Code Section 87100, et seq., prohibits any public official from making, participating in making or using his or her official position to influence a School decision (either by the Board or the Administration) in which he has a financial interest at any stage of the decision-making process. The Fair Political Practices Commission ("FPPC"), the state agency responsible for enforcing the PRA, has concluded the PRA applies to charter schools, including charter school board members, and it will enforce the Act accordingly. To avoid penalties, a public official with a financial interest must publicly disclose the financial interest and recuse him or herself from discussing, voting or otherwise attempting to influence the matter in any capacity. Failure to comply with the PRA could result in significant administrative fines as well as possible civil fines levied by the FPPC. Moreover, violations could also result in possible granting agency concerns, including possible revocation. Further, while rare, each PRA violation could lead to a misdemeanor conviction.

Applying the requirements of the PRA here, it would appear the employee Board member's participation on the UTLA bargaining team would likely constitute an attempt to influence a Board decision in which he or she has a financial interest. It could be argued that the participating employee Board member does not possess a sufficient "financial interest" as required by the PRA, because he or she is only a member of a class of employees who would all benefit from changes to compensation or health benefits. However,

there is no reported case law on this point, and we do not find that argument persuasive; specifically, the participating Board member stands to increase his or her income by participation and thus a financial interest exists. Additionally, even assuming a financial interest is not implicated under the PRA, one would be implicated under the Corporations Code (as discussed below).

As a practical matter, the employee Board member's presence at such negotiations would constitute an attempt to influence the Board's decisions on salary and benefits. Further, as the Executive Director makes key strategic decisions and recommendations to the Board throughout the negotiations process, the teacher Board member would meet, possibly many times, with the sole purpose of convincing the Executive Director, and ultimately the Board, to make various decisions regarding teacher salaries, health benefits and other essential terms of employment. Moreover, as noted, given that employee Board members participate in the process of the Executive Director's formal evaluation, the presence of the Board member on a negotiations team (in opposition to the PCHS management) could influence the decisions made by the

Executive Director during the negotiations process out of concern that failing to accommodate UTLA demands could lead to an unsatisfactory evaluation.

Corporations Code Fiduciary Duty

As noted, Board members are also subject to California's nonprofit law to ensure Directors exercise reasonable care and maintain their fiduciary duties to act in the best interest in the School over other interests. To that end, Section 5231(a) of the California Corporations Code (Non-Profit Public Benefit Corporations Law) states, "A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances." This language defines the standard of care for a Board member, and imposes specific duties generally referred to as a Board member's "fiduciary duty" to the Charter School. Specifically, this includes a Board member's duty of loyalty and the duty to maintain confidences. Charter school board members who violate the Corporations Code can be held liable for their actions if it is shown that their decisions put their personal interests above those of the corporation and this caused damage to the corporation.

As applicable here, the duty of loyalty prevents an individual Board member from advancing his or her own interests at the expense of the Charter School, its employees, or its students. Duty of loyalty questions typically arise when a Board member has a personal interest or represents an interest separate from the interests of the Charter School or when the employee Board member is in possession of some confidential information that may benefit the union negotiating team.

In this instance, it is difficult to imagine how an employee Board member could subordinate his union activities and advocacy while on the union's bargaining team in favor of his legally superior duty to further the Board's interests, especially when (as will be the case on many items) the Board's negotiating team indicates the union's proposal is not in the Board's interest.

Employee Board Member Participation In Closed Session Strategy Discussions Regarding Negotiations With Other Units

For the reasons stated above, we recommend that the Board disallow its employee Board members from participating in closed session Board discussions over other unit member's negotiations. While it appears the linkage between the financial interests of the participating members is further attenuated than if such members participated in discussion over their own collective bargaining unit, there are nevertheless troubling consequences which could easily be avoided by prohibiting such participation. Specifically, there are dangers in allowing the participation as it is common for units to receive "me too" deals in which one unit is awarded the same financial arrangement as another. Thus, a unit member participating in an unrelated unit could be tempted to lobby the Board for a significant increase knowing the same significant increase could also be awarded to that Board member's unit (or the employee Board member could be lobbying to reduce benefits for the other units allowing more money for his/her unit's increase in

compensation. Further, participation in such closed session discussions could also lead to the disclosure of Board confidences or strategy that could be used to the detriment of the Board's negotiations strategy with the participating Board members unit. This could also cause problems for the working relationship amongst the Board and with its administration.

Current PCHS Conflict of Interest Code

As noted, the current PCHS Conflict of Interest Code is substantively compliant with the applicable provisions of the Political Reform Act. I would note that, currently, the FPPC is encouraging a shorter version of the Code which includes by reference implementing regulations. However, I do not believe that the current code is out of compliance. If you wish to obtain a copy of the shorter version, we can easily provide one for your review.

* * *

I hope this information adequately addresses your concerns. If you should have any further questions regarding this matter, please feel free to contact our office.

Sincerely,

**LAW OFFICES OF MIDDLETON,
YOUNG & MINNEY, LLP**

JAMES E. YOUNG
ATTORNEY AT LAW