

Does the Charter School Board Need to Vote on EVERYTHING?

By Joe Keeney and Michael Higgins

November 2013

Charter school boards are the governing authorities over public schools that have as few as 50 children or as many as 5,000 – with annual budgets that can range from \$500,000 to \$50 million. They operate under their state’s charter school laws and regulations, and typically have a performance contract with their authorizer. Charter schools are creatures of statute and can only act through the actions of their boards, yet few state laws or authorizer contracts specify the kinds of issues on which boards should or should not vote -- leaving many boards conducting formal votes on insignificant issues, and others failing to vote on important policies.

Many charter school boards comprise a group of community members who came together to start a charter school. Some members may have prior non-profit or corporate board experience, while others may have attended meetings of the local school district board. The charter school board meetings are typically held monthly and follow the state’s open meetings or sunshine laws. They usually start with an approval of the minutes of the previous meeting, include a principal’s report and a financial report, and provide an opportunity for public comment. The board chair typically loosely follows Robert’s Rules of Order, in which a member makes a motion to approve something, the motion is seconded, and there is a vote.

But are the things that get voted on the right things? Here are some basic guidelines to board votes.

Charter Contract and By-Laws. Charter school contracts and an organization’s by-laws typically set some minimal limits on what a charter school board can and cannot do without a board vote. Board members should periodically review their charter contract and by-laws to ensure they are familiar with their requirements. Amending the charter contract or the organization’s by-laws in any way requires a vote of the board, and in most cases, also requires approval from the charter school’s authorizer.

Policies. The board should approve the school policies, the most important of which are the employee manual, the student handbook, the conflict of interest policy (if it is not included in the by-laws), the complaint policy and the fiscal policies and procedures. Charter school boards may decide to adopt other policies – generally speaking, policies are a good thing, as long as they are thoughtfully considered, well-written, and reviewed by an attorney if appropriate (e.g., employment policies). Some district school boards will submit policies for a first or second reading at consecutive meetings prior to their adoption, which can be a good practice but is not typically required.

Resolutions. Boards typically adopt formal written resolutions at the request of a third party, like a bank when the school wants to open an account or borrow money. While a charter

school can act through a voice vote or oral resolution, written resolutions memorialize other corporate actions and avoid issues that can arise from poor note taking or recordings. Resolutions should be written down and often accompanied by a certificate from the board secretary confirming that the resolution was approved at the meeting together with the vote of each board member.

Major Contracts or Purchases. Typically the approved fiscal policies and procedures specify what threshold of commitment requires approval by the school leader, board treasurer, or entire board. And some state laws have specific requirements – in DC, charter schools must publicly bid all contracts in excess of \$25,000; in Louisiana charter schools must comply with public bidding for facilities projects in excess of \$150,000. There are also very strict requirements regarding transactions in which a board member might have a conflict of interest (e.g., a transaction between the school and the board member’s company), which may require that member to disclose the conflict and abstain from voting. In all such cases, a vote should be taken, following the procedures outlined in the charter school board's by-laws.

Is it bad practice for boards to vote on small purchases or other commitments? On one hand, charter schools operate on very tight budgets and boards want to watch every penny -- and also send a message to all the stakeholders that they are watching every penny. On the other hand, board meetings that devolve into prolonged discussions about small expenditures that are already included in an approved budget can undermine the school leader’s authority, cross the line from governance into micro-management, and waste time that could be better spent addressing more important curriculum, instruction, and assessment issues. If your board meetings routinely last more than two hours, as the Jeff Foxworthy of charter schools might say, “You just might not be a high-performing board”. You will end up having board or school leadership turnover. A better practice would be to have the board delegate authority to an officer or employee to approve certain routine, budgeted items (with appropriate internal controls in place), and then to have a report to the board on all such purchases.

Charter school boards may also approve major contracts, such as a management agreement, where another entity will act as an agent for the school and make purchases or enter into other contracts on behalf of the school. The board’s approval of this type of contract takes away the need for the board to approve each of the imbedded contracts, which become the responsibility of the agent. The board should, however, still insist that it receive a full accounting of all funds expended and an inventory of all property purchased on its behalf.

Some charter school boards mimic school district procedures – for example, they require a unanimous vote to change the agenda of a meeting. In some states this can be somewhat of a gray area, because many state laws specifically exempt charter schools from regulations governing the practices of local district school boards. But generally speaking, if a traditional school district does it one way, that doesn’t mean it is good charter school practice to do

something the same way! If your board is not legally required to act in a certain manner, don't blindly follow the same practices as the local school district.

Charter school boards usually are, however, obligated to comply with the requirements for executive sessions – specifically, they need to state the reason for going into executive session (which reason has to be a qualifying reason under the law), and formally exit the executive session to vote in public. If your board routinely spends fifteen minutes in the open meeting and an hour in executive session, you just might not be a high-performing board, and you might also be running afoul of the sunshine laws.

Another special consideration is remote participation and voting. Some states allow participation and voting in a board meeting telephonically or by video (e.g., Skype or GoTo Meeting), but only if there is a quorum present in person and the remote participant can hear (or see) everyone else at the meeting.

Good boards focus relentlessly on student achievement, prudent financial management, and accountability. If you are unsure whether your board is voting on the right things, you can consult an attorney in your state who has charter school expertise (or even invite them to attend your meetings), or solicit a board training expert (some are listed at <http://bit.ly/1eOUI0A>).

Comments? Email joe@charterschooltools.org or charterschoollawyer@gmail.com.

Joe Keeney has helped scores of successful charter school boards open and operate their schools since 1997. He is the founder and CEO of 4th Sector Solutions, which provides CFO and other services charter school organizations, and Charter School Tools, a leading online resource for charter schools.

Mike Higgins is a Louisiana attorney whose practice focuses on providing affordable legal services to charter schools. He previously served as the Director of Law and Policy with the Louisiana Department of Education's Office of School Choice, and is a proud alumnus of Teach for America.

The authors would like to acknowledge Ralph Rossi, Executive Deputy Director and General Counsel, SUNY Charter Schools Institute, and Sarah E. Vandergriff, Legal Director, Louisiana Association of Public Charter Schools, for their contributions to this article.