

Operating as a Charter School and a Local Education Agency

State Charter Schools
Commission of Georgia



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Overview

- Fulfilling Legal Requirements:
 - Legal Requirements Unique to State Charter Schools
 - Legal Requirements of Operating as a Political Sub-Division
 - Federal LEA Requirements
 - State LEA Requirements

Overview

- As a governing board member, you are not responsible for intimate knowledge of every requirement of operating a charter school as an LEA. However, the governing board as a whole must have an adequate knowledge base to hold its school leader and partners accountable.
- The SCSC ultimately holds a school's governing board accountable for the school's compliance with legal and regulatory compliance. Failure of a governing board to ensure the school operates in a legally compliant manner will result in the nonrenewal or termination of the school's charter.

Legal Requirements Unique to State Charter Schools

- Eligibility Requirements
- Conflict of Interests for Board Members
- Conflict of Interests for Employees
- Preference in Hiring and Contracting
- Notice of Enrollment Procedures

Board Member Qualifications

- A Member of the Governing Board of a State Charter School MUST be:
 - A United States Citizen
 - A Resident of Georgia
- A Member of the Governing Board of a State Charter School MUST NOT be:
 - An Employee of the School

Board Member Conflicts of Interest

- A Member of the Governing Board of a State Charter School MUST NOT:
 - Act in his or her official capacity in any matter where he or she, his or her immediate family member, or a business organization in which he or she has an interest has a material financial interest that would reasonably be expected to impair his or her objectivity or independence of judgment;
 - Solicit or accept or knowingly allow his or her immediate family member or a business organization in which he or she has an interest to solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing that board member in the discharge of his or her duties as a board member;
- O.C.G.A. § 20-2-2084(e)(2)

Board Member Conflicts of Interest

- Also, Member of the Governing Board of a State Charter School MUST NOT:
 - Use, or knowingly allow to be used, his or her position or any information not generally available to the members of the public which he or she receives or acquires in the course of and by reason of his or her position for the purpose of securing financial gain for himself or herself, his or her immediate family member, or any business organization with which he or she is associated; or
 - Be an officer or serve on the board of directors of any organization that sells goods or services to that state charter school.
- O.C.G.A. § 20-2-2084(e)(2)

Employee Conflict of Interest

- Employees of State Charter Schools MUST NOT:
 - Serve on the board of directors of an organization that sells goods or services to the state charter school.
- “Employee” means an individual that works at the school or an individual that has administrative oversight at a state charter school.

Preference in Hiring and Contracting

■ Preference in Hiring:

- If two candidates are equally qualified, a state charter school must hire the candidate who is a citizen or national of the United States over another individual who is not a citizen or national of the United States.
- Preference does not apply to foreign exchange teachers.
- Prior to hiring an individual other than a citizen or national of the United States or a protected individual as defined in 8 U.S.C. Section 1324b, a state charter school shall receive approval by the commission and demonstrate that qualified teachers and other personnel were sought but not available in such area which warrants hiring an individual other than a citizen or national of the United States or a protected individual as defined in 8 U.S.C. Section 1324b.

■ O.C.G.A. § 20-2-2084(d)(1)

Preference in Hiring and Contracting

■ Preference in Contracting:

- A state charter school must give preference in contracting and purchasing of services and materials to businesses incorporated in Georgia (or qualified to do business within Georgia) that have a regularly maintained and established place of business within the state.
- This preference applies only when two or more businesses are otherwise similarly situated and qualified.

■ O.C.G.A. § 20-2-2084(d)(2)

Notice of Enrollment Procedures

- O.C.G.A. § 20-2-2083(c)(1) requires the SCSC to establish rules requiring each state charter school to:

Provide adequate notice of its enrollment procedures, including any provision for the use of a random selection process where all applicants have an equal chance of being admitted in the event that the number of applications to enroll in the school exceeds the capacity of the program, grade, or school.

Notice of Enrollment Procedures

- SCSC Rule 691-2-.05 *State Charter School Student Admissions and Lotteries* outlines requirements related to enrollment procedures.
- Those requirements include:
 - An admissions application that only requests information necessary to allow the state charter school to identify the student and determine the grade to which the student will be enrolled.
 - A written policy adopted by the governing board that details how the admission lottery will be conducted.
 - Active communication of the school's enrollment and admissions opportunities and procedures, beginning no later than two weeks prior to the enrollment or admission opportunity.

Legal Obligations of Operating as an LEA

- Requirements of Operating as a Political Sub-Division
- Federal LEA Requirements
- State LEA Requirements

Open Meetings

- The governing boards of state charter schools are subject to all provisions of the Georgia Open Meetings Act (O.C.G.A. § 50-14-1 et. seq.).
- A meeting is: A gathering of a quorum of the members of the governing board, **or committee** thereof, of a state charter school at which any official business, policy, or public matter of the state charter school is formulated, presented, discussed, or voted upon.

Open Meetings

- An agency with state-wide jurisdiction may conduct meetings by teleconference.
- Agencies other than those with statewide jurisdiction may conduct meetings by teleconference only under circumstances necessitated by emergency conditions involving public safety or the preservation of property or public services.
- However, as long as a quorum is present in person, a member may participate by teleconference if necessary due to reasons of health or absence from the jurisdiction so long as the other requirements of the law are met.
- Absent emergency conditions or the written opinion of a physician or other health professional that reasons of health prevent a member's physical presence, no member shall participate by teleconference more than twice in one calendar year.

■ O.C.G.A. § 50-14-1(f) and (g)

Open Meetings/Records and Student Discipline

- O.C.G.A. § 20-2-757. Applicability of public inspection and open meeting laws
- (a) All proceedings and hearings **conducted under this subpart** shall be confidential and shall not be subject to the open meetings requirement of Code Section 50-14-1 or other open meetings laws.
- (b) All electronic or other written records of all hearings conducted under this subpart; all statements of charges; all notices of hearings; and all written decisions rendered by a hearing officer, tribunal, the local board of education, or the State Board of Education shall not be subject to public inspection or other disclosure under Article 4 of Chapter 18 of Title 50 or other public disclosure laws; provided, however, the board of education shall prepare a written summary of any proceeding conducted under this subpart, which summary shall include a description of the incident and the disposition thereof but shall not contain the names of any party to the incident. The summary shall be a public record.

Open Records

- A public record of a state charter school is any tangible or intangible document created, received, or maintained by the school or any entity on behalf of the school.
- A public record of a state charter school remains a public record of the state charter school even if it is transferred to another party for storage or maintenance.
- All public records, except for those specifically exempt from disclosure by law or court order, must be available for public review and copying.
- Common Exemptions:
 - Education records containing personally identifiable student information.
 - Records concerning public employees that reveal the public employee's home address, home telephone number, day and month of birth, social security number, insurance...

■ O.C.G.A. § 50-18-70 et. seq.

Open Records and Vendors

- The Georgia Open Records Act includes in its definition of "public records" those that are "maintained or received by an agency or by a private person or entity in the performance of a service or function for or on behalf of an agency..." (O.C.G.A. § 50-18-70(b)(2) emphasis added.)
- Any records maintained by a vendor for the services it performs on behalf of a school, including those related to finances or personnel, are subject to the Georgia Open Records Act (and its exemptions).
- Agreements that attempt to hold records that are subject to the Georgia Open Records Act as confidential are void as a matter of public policy.

E-Verify and SAVE

- All state charter schools must register and participate in E-Verify to verify employment eligibility of all newly hired employees.
 - E-Verify is an electronic service provided by the United States Homeland Security that allows employers to determine the eligibility of employees to work in the United States.
 - “Public Employers” must not contract for an amount of \$2,500 or more for the physical performance of services unless the contractor and all subcontractors sign a notarized affidavit containing the contractor’s E-Verify identification number and specific certifications.
 - “Public Employer” means every department, agency, or instrumentality of this state or a political subdivision of this state.
 - Every agency or political subdivision shall verify the lawful presence in the United States under federal immigration law of any applicant for public benefits.
- O.C.G.A. § 13-90--10 and 50-31-1 et. seq.

Federal Requirements of an LEA

- Constitutional Due Process
- Civil Rights Act of 1964
- Equal Educational Opportunities Act
- Americans with Disabilities Act
- Section 504 of the Rehabilitation Act
- Title IX of the Educational Amendments Act of 1972
- Age Discrimination Act of 1975
- Family Educational Rights and Privacy Act
- Protection of Pupil Rights Amendment
- Elementary and Secondary Education Act
 - Improving the Academic Achievement of the Disadvantaged
 - Single Statewide Accountability System
 - Highly Qualified Teachers and Paraprofessionals
 - Education of Migratory Children
 - Programs for Neglected and Delinquent Children
 - Language Instruction for Limited English Proficient and Immigrant Students
 - Armed Forces Recruiting
 - Constitutionally Protected Prayer
 - Unsafe School Choice Option
 - McKinney-Vento Homeless Assistance Act
- Individuals with Disabilities Education Act
- Fair Labor Standards Act
- Family Medical Leave Act
- Age Discrimination in Employment Act
- Pregnancy Discrimination Act
- Genetic Information Nondisclosure Act
- Equal Pay Act
- Uniformed Services Employment and Reemployment Rights Act
- Affordable Care Act

Elementary and Secondary Education Act (ESEA)

- Comprehensive federal law outlining wide-ranging requirements
- All federal funds must be appropriately managed in accordance with federal cost principles, internal controls, and recordkeeping.
- Any misspent federal funds must be repaid through nonfederal sources.
- All core academic teachers must be “highly qualified.”
- Federal funds cannot be used to “supplant” other funding.

Special Education as an LEA

- Under IDEA, each child with a disability is entitled to receive a free appropriate public education (FAPE) through an Individualized Education Program (IEP).
- State charter schools must provide each student with a disability FAPE without regard to the cost or if the services needed by the student are traditionally provided by the school.
- **A state charter school may not turn away a student with a disability because the state charter school does not typically provide services needed by the student.**

■ 20 U.S.C. § 1400 et. seq.

Special Education as an LEA

- A state charter school must ensure the availability of a continuum of alternative placements to meet the needs of children with disabilities.
- The continuum of placements includes both class placement (general education, special classes, etc.) and supplementary services and aids to be provided in the class or other settings.

■ 20 U.S.C. § 1412

Due Process for Students

- A student must be provided due process for each disciplinary action.
- The level of due process afforded to a student will vary depending on the level of discipline.
- Due process may be as simple as providing prior notice that a behavior is unacceptable.
- Due process may be as complicated as providing the student a hearing prior to imposing the disciplinary action.
- **A student should never be the subject of disciplinary action or expulsion due to the actions of his or her parent.**

■ *Goss v. Lopez*, 419 U.S. 565 (1975)

FERPA

- The Family Educational Rights and Privacy Act (FERPA) provides parents and eligible students certain rights relating to accessing education records.
- An eligible student is a student that is at least eighteen years, or attends a postsecondary school.
- FERPA also restricts a school's disclosure of education records.
 - Except in limited circumstances, a school cannot disclose educational records without prior written consent from the parent or eligible student.
- Each educational agency or institution, including state charter schools, must provide an annual notification to parents and eligible students that contains the information identified in of 34 C.F.R. § 99.7.

■ 20 U.S.C. § 1232

Homeless Students

- ESEA also reauthorized the McKinney-Vento Homeless Assistance Act (McKinney-Vento). McKinney-Vento ensures that homeless children receive appropriate educational services and are not the subject of discrimination based on their homeless status.
- Children are considered homeless if they “lack a fixed, regular, and adequate nighttime residence.”
- A state charter shall not segregate or otherwise separate homeless children in separate schools, programs, or classrooms.
- Each state charter school must designate a staff member to serve as a local liaison for homeless youth.
- Children and youth who are homeless are entitled to immediate enrollment in the school that is in their best interest.
- McKinney-Vento requires state charter schools to provide transportation to and from the school for its homeless students.

■ 42 U.S.C. § 11431 et. seq.

State Requirements for an LEA

- Open Enrollment
- QBE Funding and the FTE Process
- Non-FTE Data Collections
- Employee Evaluations
- Single Statewide Accountability System
- Statewide Student Assessment Requirements
- Individualized Graduation Plans
- Gender Equity
- Brief Period of Quiet Reflection
- Teachers Retirement System of Georgia
- Vision, Hearing, Dental, and Nutrition Screening
- Immunization of Enrolled Students
- Disclosure of a Student's HIV status
- Infectious Diseases
- Diabetes Medical Management Plans
- Reports of Child Abuse or Neglect
- Unlawful Conduct at or Near a Public School
- School Safety Plans
- Alcoholic Beverages on School Property
- Facilities Requirements Relating to Health and Safety
- School Bus Operational and Safety Requirements

Open Enrollment

- A state charter school must allow attendance from all students residing within the attendance zone specified in the school's charter.
- A state charter school must accept all students and cannot restrict enrollment to a certain population. Even if the state charter school's instructional program is geared toward a student population, such as at-risk students, students with disabilities, or English learners, the school must accept students that are not within that population.
- A state charter school may utilize enrollment priorities only if established in law and outlined in the schools charter.

Parental Contracts

- Schools may not require parents adhere to mandatory volunteer hours or community service expectations.
- A school may adopt policies outlining volunteer or service expectations and may require parents to sign an acknowledgement of those expectations.
- However, a school must not discipline or withdraw a student for a parent's failure to meet such expectations.
- Disciplining or withdrawing a student from the school for any action or omission of a parent violates both open enrollment requirements of state law and the Constitutional Due Process rights of the student.
- State charter schools must refrain from identifying consequences that cannot be enforced.
- Under no circumstances may a school communicate to parents that volunteer or community service hours are required by the SCSC or the school's contract.

Data Accuracy

- LEA data reporting is constant and complex.
- All data reported to GaDOE is certified as true and correct (under penalty of law) by the LEA Superintendent.
- Failure to report correct data will lead to funding misappropriations.
- Reported data is utilized by many agencies, including the SCSC, to hold the LEA accountable.
- The SCSC utilizes this data for high-stakes reviews.

Teacher and Leader Evaluations

- All teachers, assistant principals, and principals of state charter schools must receive annual evaluations utilizing the evaluation instruments adopted by the State Board of Education - Teacher Keys Effectiveness System (“TKES”) and Leader Keys Effectiveness System (“LKES”).
- If a state charter school leader performs the duties of a principal as defined by State Board of Education Rule 160-5-1-.37 Teacher and Leader Evaluations, the leader must be evaluated using LKES even though the individual may have additional duties beyond the traditional scope of a principal.
- The SCSC expects all state charter schools to have at least two individuals credentialed in using LKES.

Accessing the Curriculum

- Local boards of education must provide instructional materials necessary for state-funded courses since failure to do so would restrict the student's right to free public instruction required under O.C.G.A. § 20-2-133.
- Example: Virtual schools – must provide technology and internet assistance
- Example: Music program – school must provide instruments

Student Health

- State charter schools are required to follow laws relating to student health.
- State laws relating to student health include:
 - Nutritional screening (O.C.G.A. 20-2-770)
 - Eye, ear and dental screening (O.C.G.A. 20-2-770)
 - Immunization (O.C.G.A. 20-2-771)
 - Nursing program (O.C.G.A. 20-2-771.2)
 - Scoliosis screening (O.C.G.A. 20-2-772)
 - Contraceptives/Abortions (O.C.G.A. 20-2-773)
 - Self Administration of Asthma Meds (O.C.G.A. 20-2-774)
 - Use of External Defibrillators (O.C.G.A. 20-2-775)
 - Epinephrine Use (O.C.G.A. 20-2-776 et seq.)
 - Meningitis (O.C.G.A. 20-2-778)
 - Diabetes (O.C.G.A. 20-2-779)

Facilities Requirements

- The State Board of Education is charged with ensuring that all public school facilities are located, built, and maintained in a manner that protects the health and safety of students.
- Each state charter school must receive a site code, facility code, and school code from the Georgia Department of Education Facilities Services Division prior to housing students at a facility.
- This may require submitting plans and specifications, conducting a risk-hazard assessment, an environmental assessment, or other documentation needed to verify the school meets the safety requirements.

Transportation Requirements

- A state charter school's transportation program must adhere to transportation rules and laws that protect student safety and that govern the operation of motor vehicles.
- This includes, but is not limited to:
 - Criminal Record Checks for bus drivers;
 - Licensure and Training requirements for bus drivers;
 - School bus specifications;
 - Insurance

Questions

