

# Legal Obligations

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State Charter  
Schools  
Commission  
of Georgia



# Overview

- Educational Program Compliance
- Financial Oversight
- Governance
- Students and Employees
- School Environment
- Additional and Continuing Obligations

# 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.

# 1. Educational Program Compliance

- Essential and Innovative Features
- Mission Specific Goals
- Broad Education Requirements
  - Providing Mandated Programs
  - Administering State Assessments as Required
- Data Reporting

# 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.
- Enrichment activities may provided for a fee.
- No student records, transcripts, or other materials required to enroll at another public school may be withheld for nonpayment of fees.
- Students may not be withdrawn or denied re-admittance for nonpayment of fees.

# 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.

## 2. Financial Oversight

- Financial Reporting
  - DE046
  - Audits – SCSC Rule Change
- Adherence to GAAP Standards
  - Internal Controls

## 3. Governance

- General Governance
  - Eligibility Requirements
  - Conflict of Interests for Board Members
  - Conflict of Interests for Employees
- Open Governance
- Governance Training
- Holding Management Accountable



# 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.

# Role of the Board Member

- Board members should not be carrying out the functions of school staff.

# 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

- There are TWO requirements for providing meeting notices:
- Prior to any meeting, the agency or committee holding such meeting shall make available an agenda of all matters expected to come before the agency or committee at such meeting. The agenda shall be available upon request and shall be posted at the meeting site as far in advance of the meeting as reasonably possible, but shall not be required to be available more than two weeks prior to the meeting and shall be posted, at a minimum, at some time during the two-week period immediately prior to the meeting. O.C.G.A. § 50-14-1(e)
- Every agency subject to this chapter shall prescribe the time, place, and dates of regular meetings of the agency. Such information shall be available to the general public and a notice containing such information shall be posted at least one week in advance and maintained in a conspicuous place available to the public at the regular place of an agency or committee meeting subject to this chapter as well as on the agency's website, if any. O.C.G.A. § 50-14-1(d)

# Executive Session

- Know your Exceptions
  - Property
  - Personnel
  - Confidential Records
  - Litigation
- Understand the Procedure
- Voting
- Execute your Affidavit
- Take your Minutes



# Open Meetings

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# 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...
- Personnel Records largely are NOT exempt.

■ 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.

# 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.

## 4. Students and Employees

- Rights of All Students
- Rights of Students with Disabilities
- Rights of English Language Learners
- Employee Qualifications
- Employee Rights
- Criminal Records Checks/Clearance Certificates

# 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.

# 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)



# Due Process for Students – Long-Term Suspension/Expulsion

- Any action that will keep a student from school for ten days or more requires:
  - Written notice of the charges, explanation of the evidence, and the time and date of a hearing.
  - The hearing must include:
    - The right to obtain and utilize legal counsel;
    - Opportunity to call witnesses; and
    - Opportunity to cross-examine witnesses.
  - The discipline outcome must be based only on the evidence heard at the hearing.
  - The student must have a method of appealing the decision of the hearing.

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

# Due Process for Students with Disabilities

- Students with disabilities under IDEA or Section 504 are entitled to additional procedural safeguards to ensure that students are not disciplined on the basis of a disability.
- Prior to disciplining a student with a disability for 10 or more days in a school year, the school must conduct a manifestation determination to conclude whether the behavior of the student was a manifestation of his or her disability.
  - If yes, the school needs to conduct (or amend) a functional behavioral assessment and institute a behavioral intervention plan.
  - If no, the student may be disciplined as any other student except that the school must continue to provide services to allow the student to progress toward the goals in his or her IEP.
- For serious offenses (weapons, controlled substances, serious bodily injury), a student may be removed from his or her placement for up to 45 school days without regard to whether the conduct was a manifestation of a disability.
- Protections may apply for some students not yet eligible for special education services.

# 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

# 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.

# Background Checks and Clearance Certificates

- State charter school contracts require state charter schools to obtain background checks for any individual who will have substantial contact with students.
- All educators employed by a state charter school must receive a Clearance certificate issued by the Georgia Professional Standards Commission (GaPSC).

## 5. School Environment

- Facility
- Student Retention
- Health and Safety
- Support Services
  - School Health Nurse Program
  - Nutrition Program
  - Transportation Program
- Information, Data, and Communication

# Facility Submissions

- In addition to obtaining a site code, facility code, and school code from the Georgia Department of Education Facilities Services Division prior to housing students at a facility, state charter schools must notify the SCSC of certain events surrounding the school's facility.
- When leasing a facility, the school must submit the lease (and any amendments thereto) to the SCSC prior to execution.
- When purchasing a facility, the school must submit the purchase agreement to the SCSC within 30 days of closing.
- When changing, adding, or expanding a facility, the school must receive written approval from the SCSC prior to doing so.



# Student Health Screenings

- State charter schools are required to follow laws relating to student health.
- State charter schools must keep and maintain each student's Certificate of Vision, Hearing, Dental, and Nutrition Screening or notarized document of religious objection.
- State charter schools must keep, maintain, and monitor for currency, each student's certificate of immunization or evidence of appropriate exemptions.
- State charter schools must have policies and procedures regarding a school health nurse program. (The governing board of a state charter school has wide discretion to create a program that most appropriately meets the needs of its students.)
- In addition to serving students with diabetes with appropriate services and accommodations under ADA and Section 504, state charter schools must also adhere to state law requirements to ensure the proper implementation of a diabetes medical management plan.
- State charter schools must adopt a policy on student suicide prevention and ensure that all certificated employees in a state charter school receive annual training in suicide awareness and prevention.

# 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

# FERPA

- A state charter school must use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests.
- If the school does not use physical or technological access controls, the school must ensure that its administrative policy for controlling access to education records is effective and that it ensures that only those individuals with legitimate educational interests may access the records.

■ 20 U.S.C. § 1232

## 6. Additional and Continuing Obligations

- Additional Obligations
  - Charter Contract
  - Required Interventions
  - Notice of Enrollment
  - Preferences in Contracting and Employment
  - E-Verify
- Continuing Obligations

# 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.

# Preference in Hiring

- 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)

# Questions

