



Charter School Board - ASBCS <charterschoolboard@asbcs.az.gov>

Board Training

1 message

Kathy Tolman <ktolman@evhigh.com>
To: charterschoolboard@asbcs.az.gov
Cc: Margaret Roush-Meier <mroushmeier@concordiacharter.org>

Thu, Oct 25, 2018 at 4:16 PM

Good afternoon,

Are there specifics about the yearly required training?

Who can/will provide the training?

For what length of time must the training be held?

What topics should be covered?

What are those topics and who will determine the list of topics?

Can new board members wait until the next training is done or will they need to be trained upon taking a position on the board?

Will there be a form certifying that all the training requirements have been met?

What is the reason, it was determined this component was necessary?

I appreciate any information you are able to send me.

Regards,

Kathy Tolman, Director

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November 19, 2018

VIA EMAIL AND U.S. MAIL

Arizona State Board for Charter Schools
1616 West Adams Street, Suite 170
Phoenix, AZ 85007

Re: Comments on Transparency Recommendations

Dear Board Staff:

At the October 23, 2018 Financial Framework Subcommittee meeting, President Senseman presented possible recommendations to promote transparency in charter school operations and requested that we provide feedback. The attached comments to the possible recommendations reflect our thoughts on the preliminary recommendations, as well as those of some of our clients.

We appreciate that ASBCS has engaged with stakeholders on these issues before it formally begins any rulemaking, and we remain willing to provide additional input on the recommendations should it be useful to you.

Sincerely,

A handwritten signature in blue ink that reads "Lynne C. Adams".

Lynne C. Adams

LCA/me
Attachment

PUBLIC COMMENT ON ASBCS TRANSPARENCY RECOMMENDATIONS
NOVEMBER 19, 2018

A. General. The vast majority of charter schools are not opposed to transparency measures, as long as the measures are related to an actual problem, not just a perceived, but non-existent, problem. Charter school operations were not intended to mirror school district operations, and to the extent that these or other transparency measures are based on a sense that charter schools *should* operate like school districts, they are antithetical to the philosophy that underpins charter school law and should be scrutinized to ensure that they do not unnecessarily erode the central tenets of the charter school movement.

In addition to ensuring that any transparency measures are intended to solve real problems and are not being driven solely by charter school naysayers, ASBCS should weigh the cost—in dollars and in time—to schools of any adopted requirements against the efficacy of the requirement, as ASBCS is required to do in connection with its rulemaking exemption. We urge ASBCS to identify the specific, substantiated problem each recommendation necessarily resolves. This process will only be effective if charter schools understand the problems identified and how each recommendation is necessary to resolving these problems.

Finally, ASBCS should ensure that no changes take effect without a generous ramp-up period for schools, likely precluding effectiveness until the next academic year after adoption. Some changes could require several months to implement, and schools should be given adequate time to make any necessary changes to their systems, policies, or governing documents.

Our comments on the specific transparency recommendations are below.

B. ESP Registry.

- a. ASBCS already gathers a significant amount of relevant information about ESP relationships in its new and replication charter applications, including the existence of an ESP relationship, the identity of the ESP, and a statement describing the services provided to the charter school by the ESP. This should remain the extent to which ESP information is required from charter schools.
- b. ASBCS should defer to the Arizona Corporation Commission's website for ESP ownership and governance information. The recommendation by ASBCS assumes that charter schools are privy to ownership and governance information for the ESP other than what is publicly available, and that assumption is certainly misplaced in at least some instances. The ACC's website already makes ownership and governance information publicly available for entities lawfully authorized to do business in Arizona.

Therefore, ASBCS should tie disclosures about ESP ownership and governance to what is required by the ACC and reflected on its website. Similarly, charter schools should not be required to update ownership/governance information about the ESP entity because, again, the charter school may not be privy to such changes.

- c. Related to the above comment, ASBCS could include a statement on the ASBCS Online profile of the charter school notifying the public that more details about the ESP entity may be available on the ACC website.
- d. Any new ASBCS requirements must acknowledge that charter schools may not be able to disclose trade secrets that are protected under Arizona law. Many schools' agreements with an ESP contain trade secrets, and the schools should not be subject to penalties for failing to disclose that information, and indeed, such penalties would be contrary to Arizona law.
- e. Regardless of the type of ESP information that must be disclosed, any new ASBCS requirements should exhaustively identify and limit how ASBCS is permitted to use the ESP information.

C. Annual Board Trainings.

- a. The connection between board training and transparency is unclear. For that reason, ASBCS should identify the reasons that it believes training is appropriate and necessary and then tailor required trainings to address those needs. For example, although an incoming board member should receive open meeting law and governance training, a board that has not received complaints of alleged violations should not be required to participate in training every year.
- b. ASBCS must carefully and thoughtfully identify the board and/or individuals who would be required to participate in training. As the public body for open meeting and public records law purposes, any required trainings should be limited to the governing body members of the charter school, not the corporate board (if the charter school has such a dual-board structure).
- c. ASBCS should carefully consider the economic burden imposed by any required training and should respect the success and professionalism of the charter schools it authorizes. For any required trainings, ASBCS should both ensure free options readily exist (including on-demand, web-based trainings) and provide training guidance and standards so schools may either provide training in-house or find a trusted partner to provide the training.
- d. Finally, many charter schools already have a hard time recruiting individuals who are willing to volunteer their time to serve on a charter school board, particularly considering the potential liability for such service. Placing

additional burdens on those individuals, such as an inordinate amount of training, will certainly make it that much harder to recruit quality board members.

- e. If ASBCS requires training, it should establish a clear number of hours of training and spread the requirement over several years, to allow more flexibility. In the alternative, ASBCS should consider establishing a maximum amount of training hours for board members over a period of years.

D. Board Membership.

- a. As the public body for open meeting and public records law purposes, any board membership requirements should only be applicable to the governing body of the charter school, not the corporate board of the charter holder (if the charter school has such a dual-board structure).
- b. Imposing an arbitrary board minimum does not achieve transparency or address conflicts of interest; it unduly burdens the governance and operations of the charter school and will force many charter schools to incur legal fees to revise their governing documents.
- c. There are legitimate legal and business reasons for a charter school to have a variable board size, and ASBCS should not limit a charter school's ability to avail itself of those benefits by requiring a minimum board size. For example, if the number of directors fall below the required minimum, the nonprofit will be acting in violation of its governing documents if it takes significant action. This will inevitably create a situation where a school hastily recruits and appoints a board member to fill a spot, rather than taking the time to recruit an individual for her mission-alignment and qualifications.
- d. Charter schools are required to comply with state and federal law, and ASBCS rules should align with those requirements. For schools whose corporate board and governing body is the same, the Arizona Nonprofit Corporation Act, particularly A.R.S. § 10-3803(A), requires only that a nonprofit board of directors consist of "one or more individuals." Similarly, the Internal Revenue Code does not require a minimum board size, but instead focuses on the relationships among board members.
- e. If a minimum board size must be set, that minimum should be three directors instead of five. It can be difficult to recruit board members, and three directors provide a sufficient diversity in perspective, while being reasonably attainable. Any perceived open meeting law issues related to having only three board members are just perceived issues. The vast majority of charter

school board members do not speak with each other outside of public board meetings about board business, period.

E. Website Link to Performance Dashboards.

- a. A charter school's website is a key, first-impression with its families, and ASBCS should ensure that each school has discretion over its website's design and contents.
- b. Any required link should be in the location and size determined by the school. In no event should ASBCS require the actual dashboards to be on the school's website.
- c. ASBCS should be required to add a full explanation on its own website of what the dashboards indicate and the data upon which they are based, including (a) timeliness of the data, given that historically the dashboards have contained data from many years ago; (b) contextualization of the data so users can interpret the dashboards effectively; and (c) explanations on the dashboard page when deficiencies have been corrected by a school.
- d. ASBCS should also be required to immediately make corrections to the dashboards so erroneous information does not remain publicly visible. ASBCS has been slow at times in the past to acknowledge and remedy any data or calculation errors. Schools should have recourse if ASBCS does not timely make the corrections. Alternatively, if recalculating the dashboard is not timely possible, then ASBCS should conspicuously identify the dashboard as being inaccurate until the update is made.

F. Mandatory Notifications.

- a. These notifications generally seem to suffer from the same issues that led to a revamping of the financial framework measures—they do not reflect the nuanced view of how charter schools operate and what factors may truly be indicators of financial distress. The measures that might be related to a school district's financial distress may not accurately reflect a charter school's financial distress, given the significant funding differences.
- b. Short-term financing solutions allow charter schools to navigate the inconsistencies related to the timing and amount of payments that are outside of their control. There are legitimate reasons that a charter school may receive a short-term advance of its state aid payments. For example, Title I payments and state aid payments have at times been delayed or even incorrect. The proposed notifications seem to prefer long-term loans over short-term financing options, notwithstanding that a short-term solution may

be more financially “healthy” for a school and more reflective of its cash flow needs.

- c. Similarly, a school may terminate a line of credit or cancel its health or liability insurance to go with a different provider, both of which are common business operations that should not require affirmative notifications to ASBCS. Any notification list should include only those items that are truly dispositive of financial distress, such as a charter school filing for bankruptcy protection.
- d. Any notification list should also only include red-flag indicators that are not already provided to the State. For example, agreements that provide for advances on state aid payments are already filed with the State, so filing with ASBCS is redundant.
- e. Charter schools may have legitimate disputes with vendors and landlords that do not have anything to do with financial distress, but that have everything to do with the quality of services provided by the vendor or landlord, or other relationship issues. Those non-financial issues should not trigger an obligation for the charter school to notify ASBCS; to do so will simply give more incentive to bad vendors to harass a school or gain negotiating leverage by sending it to collections or filing suit.
- f. Any new requirements should exhaustively identify and limit how ASBCS is permitted to use this information and should specify that no underlying documentation for any identified event is required to be submitted to comply with the obligation. The notification should be just that – a notification – not handing over the legal filings, contract, or other underlying documentation.

G. Compliance Questionnaire. ASBCS already requires a significant review of schools’ legal compliance with the annual audit compliance questionnaire. It is therefore unclear what additional measures should be examined. For example, internal controls are currently evaluated every year in the annual audit. Additional questions in this area may be warranted, but there should be a discussion with stakeholders so that they understand what additional information ASBCS is attempting to discern.