

Wednesday - June 6, 2012

TO: All Charter School Board Members and School Directors

RE: Governance Models and Board Structures

In recent weeks our office has received inquiries about the definition of governance models and board structures and complaints that there are charter schools changing governance models illegally.

So today I am going to address the definition of **governance models** and **board structures**, in the hope that the violations of law which seem to have occurred will be corrected, and that we avoid any further violations in terms of charter school governance models and structures.

Let's start with a little context and history...

Minnesota's charter school law enacted in 1991 established the first requirements for charter school boards. The **governance model required by statute was a teacher- majority board**, and the required minimum number of three directors (yes, only three were required then). Other than requiring a teacher-majority, the remaining composition was left to the board to establish. By tradition and practice the balance of the board membership were parents, other staff members, and people from the broader community.

In 1999, the charter school law was changed to allow for a waiver from the teacher- majority governance model if granted by the then State Board of Education, and then by the Commissioner, when the State Board was abolished.

In 2001, the law was changed again, to require a minimum of five board members. It did not change the teacher-majority requirement or, the waiver process. What it did do is increase the number of teachers that were on boards and over time that led to an increase in the number of waiver requests.

The granting of a waiver to the teacher- majority governance model was at the sole discretion of the commissioner, and in an eighteen month period in 2007-2008, the Commissioner approved fourteen waiver requests and denied fifteen. Once, a school was granted a waiver, it could lose the waiver, as waivers normally were for the length of the charter school contract, which back then could be no more than three years.

Some schools sought waivers because their staff size meant that some teachers hardly ever got a break from board duty, others because they wanted to expand the range of experience/background of folks on the board, and sadly, there were schools that sought waivers as a way to solve personnel problems on the board rather than improve governance.

In 2009, after years of debate, complaints about the waiver process, the issuance of the Office of Legislative Auditor recommendations, and the need to improve the governance of charter schools, MACS proposed a series of changes to the charter school law. Among the reforms were several changes in terms of charter school board requirements:

So, what did the 2009 law change in terms of charter school board governance:

First, it eliminated the mandate/requirement that charter school boards have a “teacher majority” governance model. The governance models now permitted are either a teacher-majority model or a non-teacher majority model.

What the law did not do is eliminate or change any teacher- majority board governance models charter schools had in place in May, 2009. Charter boards that had a teacher-majority model in place prior to May, 2009 retain that model until the board completes the required statutory process to change the governance model to a non-teacher majority.

Second, it required that all boards maintain a structure of at least one teacher, one parent and one community member. This board structure is required regardless of the governance model selected by the school. *Now, for example, a school may have a non-teacher majority governance model with a composition that results in a parent majority, a community majority, or an equal minority. Or, schools may have a teacher-majority governance model with a minority of parents and community members.*

What the law did not do is automatically change the governance model. The law simply requires that all boards have the required structure of at least of person from each category on the board no matter the governance model.

Third, it eliminated the discretionary waiver process regarding board governance models and **established a multi-step legal process** that must be followed if a school wishes to change the governance model of the board. That process requires a majority vote of the board and the teachers, and approval of the authorizer.

What the law did not do is automatically change the governance model of a charter school board. The law simply identifies the process for changing the governance model and moved the formal approval from the commissioner to the authorizer.

So what is the definition of “Governance Model” referred to in MN Statutes 124D.10 Subd. 4(g)?

It has and continues to mean a teacher-majority or non-teacher majority.

So what is the definition of “Board Structure” referred to in MN Statutes 124D.10 Subd. 4(g)?

It means the composition of board membership: number of parents, teachers, and community members.

So what does all of this mean?

- It means that if a school changed its governance model over the past 3 years without following the legal process outlined in the charter school law that it violated the law.
- It means that a school cannot change its governance model every year unless it follows the legal process outlined in the charter school law or it will be in violation of the law.
- It means that if a school changes its governance model in the future without following the legal process outlined in the charter school law that it will be in violation of the law.

Final Comments

While academic achievement of students is considered the ultimate expression of a school's performance, the governance of schools and all it entails is a critical indicator of the capacity, character and competence of the board (meaning the adults) who have the legal and moral responsibility for the operation of the public school.

Schools where there is constant changing of governance models or board structures, for whatever reason, defy the principles of good nonprofit governance, and if on top of that ,they do it contrary to the process outlined in statute, they are not only violating the law, they are also acting contrary to the interests of the charter school movement.

When any individual in a group or the group itself acts contrary to their own interests - in this case, the political interest is to demonstrate that charter schools are capable of governing themselves within the context of the law, one can expect that the opponents of charter schools will seize on any violations and incompetence to argue for more limitations on charter school autonomy.

The charter school community holds the fate of charter school autonomy in its own hands – either it can demonstrate accountability through sound decision-making and practices in governance or, it can allow others to argue that charter schools need to demonstrate accountability through the imposition of more rules and regulations.

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