

# Charter Management Organization Infrastructure:

## What it Takes to Thrive

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# Extreme Caution Required Due to Changing Landscape

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# What are the pros and cons, legal restrictions of opening under an existing 501c3 versus starting a new one?

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One nonprofit means:

- Fewer Board members to staff and fewer Board meetings
- Fewer sets of Board minutes
- Fewer tax filings
- Consistent approach and mission due to same leadership team
- Easier to navigate conflict of interest laws
- All assets and liabilities together
- Many authorizers see this as a more transparent structure
- If nonprofit does non-charter activities, you must take additional steps

# What are the pros and cons, legal restrictions of opening under an existing 501c3 versus starting a new one?

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Two or more nonprofits means:

- Potential for conflicts of interest elevated
- Potential for excess benefit transactions elevated
- Potential for investigations by FCMAT and law enforcement elevated
- Potential for disputes between boards over staffing and financial issues
- Assets and liabilities clearly divided by school

# Board Structures and Options

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We have the Growth Models toolkit, but how do we walk someone through the various options and help advise them on what is best for them?

- Best practice is to avoid structures that limit transparency
- Best practice is to pick a structure that is simple to manage and navigate
- Consider carefully the political baggage with some structures, not just whether it is technically legal

# How do I share staff? How do you staff a CMO? What are the legal structures?

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Central office staff salaries and benefits can be allocated among the schools operated by the CMO based on a reasonable and fair methodology (typically student headcount).

Two most common legal structures:

- One nonprofit that all central office and site staff are employed by (recommended)
- Each school is a separate nonprofit and they contract with a separate CMO nonprofit

# What is appropriate for CMO to do? How do you create a formal process?

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CMOs provide services that are typically provided by a school district central office:

- Finance and accounting
- HR and payroll
- Facilities planning and development
- Instructional support/professional development
- Legal
- Special education administration functions

Division of responsibilities between sites and central office should be clearly delineated.

# Tracking the Dollars

## Why does your charter authorizer care?

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Per-Pupil Funding is intended for the students served by the Local Education Agency (LEA)

- All restricted funds are to be spent and reported in accordance with regulations
- Cost allocations of all dollars need to be accurate
- Do not spend dollars on non-charter school expenses
- Do not commingle funds with non-charter programs
- Local Control Accountability Plan (LCAP) including the Federal Addendum is subject to audit testing
- Each Charter School within CMO network should be independently fiscally viable

# FISCAL RESPONSIBILITY

## INTER-SCHOOL TRANSFERS

Cash Transfers vs. Inter-Company Payables  
Other Asset/Liability Transfers  
Fiscal Policies & Procedures  
Audit & OIG Investigation Risk

## SUSTAINABILITY

Reserve Levels  
Near-Term & Sustainability Financial Ratios  
Philanthropy as a Percentage of Budget  
Facility Costs

## CENTRAL ADMINISTRATION OFFICE

Transfers between Central Admin & Schools  
Management/Shared Services Fee  
Authorizer Oversight  
Do Not Fund Out of State Schools/Growth

## LOCAL/STATE/FEDERAL REPORTING

Misappropriation of Funds  
Restricted vs Unrestricted Revenue Sources  
Scrutiny of Accountability Plans: LCAP & Federal Addendum  
Federal Program Monitoring & Uniform Guidance

# CMO PAYMENT STRUCTURES

## CMO PAYMENT STRUCTURES

- Develop a transparent fee structure that is consistent year over year
- Equity of fee across all schools in CMO
- Review rationale of fee structure with independent auditor in advance of implementation
- Fee structure to be described in annual audit report

## NECESSARY FISCAL STRUCTURES

- Streamline board approved Fiscal Policies and Procedures across CMO
- Do not make loans to affiliated organizations
- Be open to sharing CMO Central Administration structure and financials with authorizer
- Include Central Admin financials in audit report

# Capturing Economies of Scale

## ECONOMIES OF SCALE

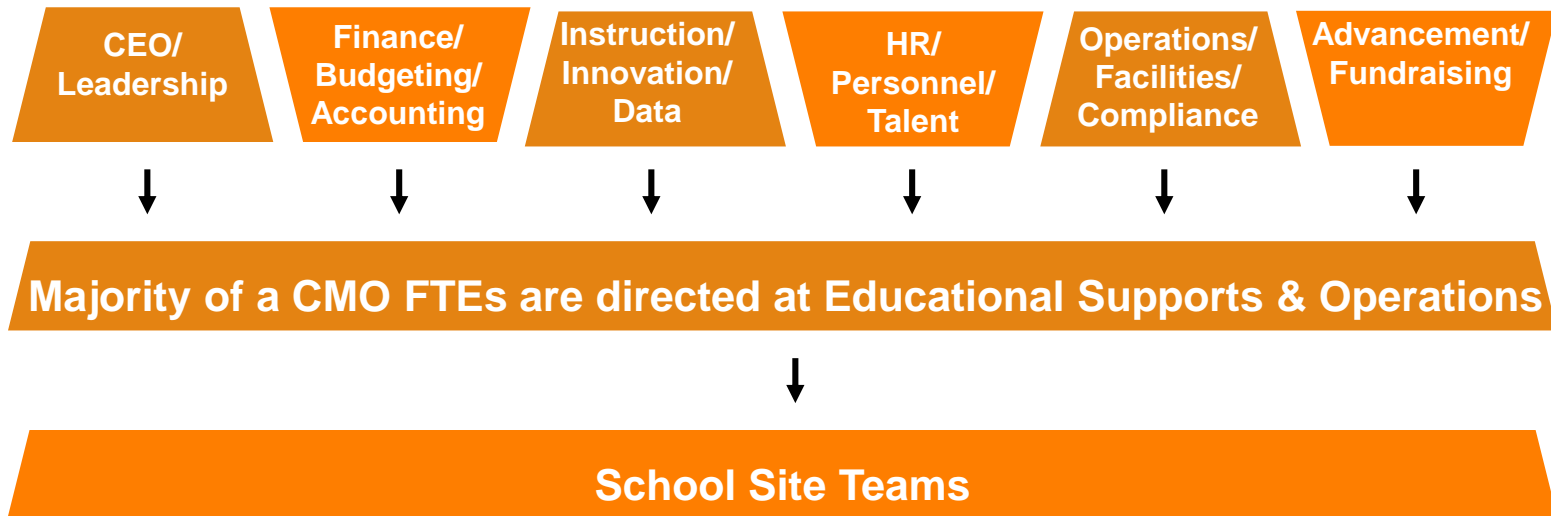
- Varied Tipping Point
- Anticipate Scale – It is a Gamble
- Projecting a break-even point
- Transparent Fiscal Structure Between CMO and Schools
- Outsourced Back Office (Accounting/Payroll) vs. In-House

## GROWING PAINS

- Charter Schools Fiscally Disadvantaged Compared to Traditional Districts
- Facility Cost Barriers
- Reliance on Philanthropy
- Challenge of Maintaining a Lean Central Office
- Limited Operating Cash Flow Options for Expanding CMO Networks vs Replication

# CMOs Aim to Provide All School Supports

## Typical Shared Staff Positions



# Best Practices to Guide Size and Pacing of Growth

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## **OPERATION STRUCTURES**

Moving from startup to growth with a focus on sustainability



## **PLANNING**

Operations and Data Management Calendar is created



## **GOVERNANCE**

Single Board  
Focus on Transparent Structure



## **QUALITY CONTROL**

Targeted prescriptive educational and operational support services are implemented and monitored



## **PROFESSIONAL BACK OFFICE**

Knowledge of state and federal regulations  
Transparency is Key to Success



## **CULTURE OF FISCAL STEWARDSHIP**

Staff are trained across CMO on fiscal policies and procedures  
Staff held accountable

# What laws change as I grow into multiple sites, with multiple boards?

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- Watch out for conflicting authorizer interpretations of laws
- Typically authorizers will want board meetings in their jurisdiction at least some of the time (might get resolved by SB126).
- Watch out for Brown Act and conflict of interest violations if you have overlapping Boards

# What causes concern with regard to CMO structures? What do I need to watch out for?

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- Sole statutory member structures under attack due to lack of transparency and transfer of power to people the authorizer may not know
- Parents may be reluctant to give up strong parental involvement as a single school turns into a network, resulting in governance challenges
- People getting paid out of multiple organizations
- People getting paid more after they move from a site-level position to a CMO position.

# What causes concern with regard to CMO structures? What do I need to watch out for?

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- Conflicts of interest when individuals are on more than one side of a transaction
- Transfers of funds from charter school to related party entities, particularly where current or former management ends up profiting
- Failure to disclose related parties to auditor and consolidate financials as appropriate

# Proposed Legislation

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Bills Designed to Shrink the Charter Movement

# AB1505

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- Repeals the ability of a county board or the state board to approve a charter on appeal (either new school or renewal).
- Repeals the ability of a county board to grant a countywide benefit charter and the state board's authority to grant a statewide benefit charter.
- Existing county board and state board approved charters would need to seek approval from their local district. If the local district says no, charter school would close.
- Renewals would be between one and five years rather than five years.
- Repeals the ability to appeal a revocation of a charter.
- Repeals the requirement that increases in pupil achievement be the single most important factor to be considered at renewal and revocation.

# AB1505, Cont.

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- Recasts approval as “shall not be required to approve” rather than “shall approve unless”. This is a significant change in the burden that must be met by the District governing board.
- If a charter school has been identified as needing “technical assistance” by the authorizing district, it shall be renewed for less than five years.
- “The chartering authority shall consider during renewal whether the charter school maintains sound management of its business and financial operations, and whether the school is expected to meet its financial obligations for the current and two subsequent fiscal years.”

# AB1505, Cont.

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- Chartering authority shall “develop a program to anonymously call charter schools as prospective parents with children who have exceptional needs or parents with children who are English language learners and record the response. The chartering authority shall provide guidelines to staff, create scripts for consistency, and provide anonymous cell phones. The chartering authority shall notify the charter school of the results of the calls made pursuant to this program, and shall consider during renewal the extent to which the results of the program determine whether the charter school is open and receptive to students with exceptional needs and English language learners.”

# AB1505, Cont.

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- Repeals the requirement that increases in pupil academic achievement for all pupil subgroups served by the charter school be the most important factor in determining whether to revoke the charter.
- The Superintendent (of Public Instruction) shall make recommendations to the Legislature by September 1, 2020 regarding 1) charter school student academic achievement criteria that shall prohibit a charter school from being renewed, 2) charter school student academic achievement criteria that may warrant a charter school not to be renewed and 3) charter school student academic achievement criteria that may warrant charter revocation.

# AB1506

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- Currently a “spot bill” – apparently awaiting final language to be drafted by Legislative counsel.
- Public statements indicate that this bill will be used to effectuate a charter cap.
- Public statements indicate that this cap will be set at the number of schools currently operating in California today.
- Significant questions about whether schools with numbers will be allowed to open this fall or the following fall as planned.
- Significant questions about impacts of this on long-term bond financing.
- Might be an advantage to getting a charter number now in case there is a “waiting list” established for purposes of opening new schools.

# AB1507

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- Bill would prohibit charter schools from locating even one single site outside their authorizing district boundaries, even when there is no site within the sponsoring school district or it is needed during a temporary construction project.

# AB1508

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- Bill would permit chartering authorities to consider, in determining whether they grant a new charter petition, the financial, academic and facilities impacts the new charter school would have on neighborhood public schools.
- This bill, particularly combined with language in the other bills, would stack the deck against charter petition approvals.

# What are the implications of the AG Opinion and SB126?

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AG opinion states that charter schools must comply now with Brown Act, Public Records Act, Political Reform Act and Government Code 1090 without any need for further legislation.

SB126 codifies the AG opinion with regard to charter schools and expands the applicability of these laws to nonprofit entities managing charter schools.

# SB126

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1. Codifies AG opinion with regard to Public Records Act, Brown Act, Political Reform Act and Government Code 1090 being applicable to charter schools.
2. Makes “entities managing charter schools” also subject to these laws as well.

Entities managing charter schools means a nonprofit public benefit corporation that operates a charter school consistent with Section 47604. An entity that is not authorized to operate a charter school pursuant to Section 47604 is not an “entity managing a charter school” solely because it contracts with a charter school to provide to that charter school goods or task-related services that are performed at the direction of the governing body of the charter school and for which the governing body retains ultimate decision making authority.

# SB126

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So what does the Legislature mean when it says “operates a charter school consistent with 47604”? It is intending to mean:

- Nominating, appointing, or removing board members or officers of the charter school.
- Employing, supervising, or dismissing employees of the charter school, including certificated and noncertificated school personnel.
- Managing the charter school’s day-to-day operations as its administrative manager.
- Approving, denying, or managing the budget or any expenditures of the charter school that are not authorized by the governing body of the charter school.
- Providing services to a charter school before the governing body of the charter school has approved the contract for those services at a publicly noticed meeting.

# SB126

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3. Contains a provision proposed by CCSA to ensure charter schools are the entities that adopt the conflict of interest code for charter schools and not school districts as has been the practice in LAUSD and a few other districts.
4. Contains new requirements on where charter schools boards can meet:

*The governing body of one charter school shall meet within the physical boundaries of the county in which the charter school is located. A two-way teleconference location shall be established at each schoolsite.*

*The governing body of one nonclassroom-based charter school that does not have a facility or operates one or more resource centers shall meet within the physical boundaries of the county in which the greatest number of pupils who are enrolled in that charter school reside.*

*A two-way teleconference location shall be established at each resource center.*

# SB126

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5. Contains new requirements on where board of entities managing charter schools can meet:

- *For a governing body of an entity managing one or more charter schools located within the same county, the governing body of the entity managing a charter school shall meet within the physical boundaries of the county in which that charter school or schools are located.*

*A two-way teleconference location shall be established at each schoolsite and each resource center.*

- *For a governing body of an entity that manages two or more charter schools that are not located in the same county, the governing body of the entity managing the charter schools shall meet within the physical boundaries of the county in which the greatest number of pupils enrolled in those charter schools managed by that entity reside.*

*A two-way teleconference location shall be established at each schoolsite and each resource center.*

6. *The governing body of the entity managing the charter schools shall audio record, video record, or both, all the governing board meetings and post the recordings on each charter school's internet website.*

# SB126

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7. Also contains a provision relating to employees of charter schools serving on the board:

*Notwithstanding Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code, an employee of a charter school shall not be disqualified from serving as a member of the governing body of the charter school because of that employee's employment status. A member of the governing body of a charter school who is also an employee of the charter school shall abstain from voting on, or influencing or attempting to influence another member of the governing body regarding, all matters uniquely affecting that member's employment.*

# SB126

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8. It contains a provision regarding unrelated activities:

*To the extent a governing body of a charter school or an entity managing a charter school engages in activities that are unrelated to a charter school, Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code, the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code), the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), and the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code) shall not apply with regard to those unrelated activities unless otherwise required by law. (emphasis added)*

*\* Please note that “unless otherwise required by law” creates a new compliance minefield.*

# SB126

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9. A new provision about non-charter business and charter business at the same board meeting:

*A meeting of the governing body of a charter school to discuss items related to the operation of the charter school shall not include the discussion of any item regarding an activity of the governing body that is unrelated to the operation of the charter school.*

10. **Remember, all of these changes in SB126 are not yet effective. They become effective January 1, 2020. Additional legislation later this year could change these laws further. In the meantime, compliance with the Attorney General's opinion is strongly recommended.**

THANKS FOR  
ATTENDING TODAY

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QUESTIONS  
AND  
RESPONSES