





**YM&C**  
YOUNG, MINNEY & CORR, LLP

## Show Me the Money: Misuse and Misappropriation of Charter School Funds

Presented by:

<p><b>Paul C. Minney, Esq.</b> pminney@mycharterlaw.com</p>	<p><b>Miles Denniston</b> CSMC mdenniston@csmc.com</p>
---	--

**CSMC**

**THE CHARTER LAW FIRM**

---

---

---

---

---

---

---

---


---

---

---

---

## YM&C Firm Overview



- Partners have over 100 years of collective experience working with charter schools
- 32 attorneys working with charter schools throughout the state in all areas of charter school law (e.g., employment/labor, special education, nonprofits, litigations, audits, facilities, etc.)
- Represent most of California charter schools
- Conduct workshops for charter schools in all areas of legal compliance

**YM&C**  
YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---

---

---


---

---

---

---

## Goals for Session



1. This is a primer; non-exhaustive overview.
2. Create issue spotters!
3. Charter petition, bylaws etc. might obligate you to different rules – need to ensure charter, bylaws etc. consistent with these transparency laws.
4. Comprehensive board/staff training recommended for each school.
5. Limit disruptions and liabilities.

- Disclaimers
  - Real problems are fact specific & complex
  - Cookie-cutting can be dangerous
  - Non-attorney advice and the attorney-client privilege
  - Only highlighting major issues due to short time period

**YM&C**  
YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---

---

---

---

---

---

---

Why You Should Care About Compliance With the Laws We Are Discussing Today



- Potential criminal penalties
- Potential fines
- Potential charter revocation
- Loss of good reputation
- Potential loss of foundation support and funding



YOUNG, MINNEY & CORR, LLP

4

---

---

---

---

---

---

---

---

QUESTIONS ANSWERED

## Show Me the Money: Misuse and Misappropriation of Charter School Funds



YOUNG, MINNEY & CORR, LLP

---

---

---

---


---

---

---

---

## Overview



Recent court cases and audits have identified a number of concerns regarding how charter school funds are spent.

**Goals**

1. Update you on emerging legal issues
2. Provide you best practices going forward



YOUNG, MINNEY & CORR, LLP

6

---

---

---

---


---

---

---

---


## Big Picture



Expenditures of Money by Charter Schools

- “General-purpose entitlement funding may be used for any public school purpose determined by the governing board of the charter school.” – CA Education Code
- LCFF supplemental and concentration grant funds must be spent in accordance with each school’s LCAP plan – CA Education Code
- Funds received by your charter school, whether from the State of California or other sources, are generally considered “public funds”
  - Article XVI, Section 6 of the California constitution

7



YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---


---

---

---

---


## Money Matters



Additional Legal Authority Regarding School Funds

- Nonprofit Integrity Act of 2004 (Government Code 12585 *et seq.*)
- Conflict of Interest Laws
  - Political Reform Act of 1974 (Government Code section 81000 *et seq.*)
  - Government Code sections 1090 and 1091
- Corporations Code
  - Self dealing rules: Section 5233

8



YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---


---

---

---

---


## Money Matters



A Note on the Political Reform Act and Government Code Section 1090

- The CA Attorney General Recently Published an Opinion stating charter schools must comply with PRA and 1090 (among other public laws)
- SB 126 has passed the Legislature; Expect new law in January 2020.
- Employees on charter school boards: An evolving question

9



YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---


---

---

---

---


## Embezzlement



Avoid charges of embezzlement (Cal. Penal Code Section 503) – two elements:

1. Spending money outside the authority of its use; and
2. Fraudulent intent (an intent to put the money to use for a purpose other than that which it was authorized).

10



YOUNG, MINNEY & CORR, LLP

---

---

---

---


---

---

---

---

## Misappropriation




Misappropriation of Public Funds (Cal. Penal Code Section 424)

A person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who either:

1. Without authority of law, appropriates the same, or any portion thereof, to his or her own use, or to the use of another; or,
2. Loans the same or any portion thereof; makes any profit out of, or uses the same for any purpose not authorized by law; or,
3. Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or,

11



YOUNG, MINNEY & CORR, LLP

---

---

---

---


---

---

---

---


## Crime and Punishment



4. Fraudulently alters, falsifies, conceals, destroys, or obliterates any account; or,
5. Willfully refuses or omits to pay over, on demand, any public moneys in his or her hands, upon the presentation of a draft, order, or warrant drawn upon these moneys by competent authority; or,
6. Willfully omits to transfer the same, when transfer is required by law; or,
7. Willfully omits or refuses to pay over to any officer or person authorized by law to receive the same, any money received by him or her under any duty imposed by law so to pay over the same,—

Is punishable by imprisonment in the state prison for two, three, or four years, and is disqualified from holding any office in this state.

12



YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---

---

---

## California False Claims Act



Cal. Govt. Code Section 12650 et seq.

1. Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval.
2. Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim.
3. Conspires to commit a violation of this subdivision.
4. Has possession, custody, or control of public property or money used or to be used by the state or by any political subdivision and knowingly delivers or causes to be delivered less than all of that property.



13

YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---

---

---

## California False Claims Act



5. Is authorized to make or deliver a document certifying receipt of property used or to be used by the state or by any political subdivision and knowingly makes or delivers a receipt that falsely represents the property used or to be used.
6. Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property.



14

YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---

---

---

## California False Claims Act



7. Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to the state or to any political subdivision, or knowingly conceals or knowingly and improperly avoids, or decreases an obligation to pay or transmit money or property to the state or to any political subdivision.
8. Is a beneficiary of an inadvertent submission of a false claim, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the state or the political subdivision within a reasonable time after discovery of the false claim.



15

YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---

---

---

## California False Claims Act



### Cal. Govt. Code Section 12650 et seq.

- Any person who commits any of these acts shall be liable to the government for:
  - Three times the amount of damages sustained
  - The costs of a civil action brought to recover any penalties or damages,
  - A civil penalty of not less than five thousand five hundred dollars (\$5,500) and not more than eleven thousand dollars (\$11,000) for each violation



16  
YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---

---

---

## Additional Issues



### Private Inurement Limitations

- Nonprofit corporation funds must be devoted to charitable exempt purposes and NOT private use.

### Excess Compensation

- IRS allows tax-exempt organizations to pay executives "fair and reasonable" compensation.
  - Conduct comparability study
  - Review compensation for similar classifications for schools of similar size and geographic location
  - CA law: charter school boards must consider executive compensation during a regular board meeting and must take action during public session



17  
YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---

---

---

## "Minor" Issues – Big Problems



- If financial misconduct is found, even relatively minor instances will be used against your school.
  - Angry community members at Board meetings or authorizer meetings.
  - Parents and foundations may decide not to donate to school
  - Parents may remove their students causing enrollment drop
- May result in audits by the Fiscal Crisis and Management Assistance Team (FCMAT), who, when they complete the audit, make it a public document
  - FCMAT Audits are time-consuming, onerous, and create a stigma around your school (regardless of whether any allegations are substantiated.)
  - FCMAT audits are very expensive to rebut!
- If you are in LAUSD, allegations may result in OIG audit/review
- Ignorance is not a defense!



18  
YOUNG, MINNEY & CORR, LLP

---

---

---

---


---

---

---

---

## National Headlines




"Founder and Former Administrator of Public Charter Schools in Albuquerque Sentenced to 60 Months for Conviction on Federal Theft, Fraud and False Statement Charges" – Press Release from U.S. Attorney's Office

"New Vision Charter School Under Investigation for Financial Irregularities and ADA Compliance" – The Tennessean

"Charter School Operator Accused of Spending Funds for Students on Himself" – South Florida Sun Sentinel

"Analysis: 1 in 4 Charters Shows Significant Financial Red Flags" – Arizona Republic



19  
YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---


---

---

---

---

## Case Studies




### Eugene Selivanov

- Founder/Executive/Board Member of Ivy Academia Charter School in LAUSD.
- Convicted of 24 felony counts in April 2013, including embezzlement, misappropriation of public funds, money laundering, and a false tax return statement.

Convictions Stemmed From:

- Purchases made on school credit cards.
- Rental payments to entities controlled by Selivanov.



20  
YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---


---

---

---

---

## Case Studies




### Jeremy Landau

- Former Board member, CA Virtual Education Partners.
- Charged with 16 felony counts including money laundering, misappropriation of public funds, and conflict of interest (Gov. Code sec. 1090).
- Faces over 14 years in prison if convicted.

Charges Stem From:

- Allegedly asked to invest \$750,000 of charter school public funds and promised to make a speedy \$3 million return on investment.
- Funds never returned to charter school.
- Accused of laundering the money for personal gain.



21  
YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---


---

---

---

---

**Case Studies**



**Charles Steven Cox**

- Founder of CA Charter Academy.
- At time of collapse, CCA had 36 schools in the state.
- Charged with 56 counts of misappropriation of public funds, 56 counts of grand theft, and one count of filing a false tax return.
- Still awaiting trial since 2007; settlement may include reimbursement of millions of dollars.

Charges Stem From:

- State audit alleged he was owner of for-profit company that provided management services to schools, misused millions of public funds to "lavishly" pay himself, friends, and family and to buy concert tickets, spa services, etc.

YM&C 22  
YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---


---

---

---

---

**Case Studies**



**Kendra Okonkwo**

- Executive Director of Wisdom Academy of Young Scientists (WAYS).
- Stipulated with FPPC to two counts of using her position to influence governmental decisions in which she had a financial interest and two counts of signing contracts in which she held an economic interest.
- \$16,000 fine

Charges Stemmed From:

- Allegedly negotiated and signed lease agreements for WAYS to lease property for two schools. She owned the property.
- Allegedly received over \$300,000 in rental payments in 18 months.

YM&C 23  
YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---


---

---

---

---

**Case Studies**



**Edward Fiszer**

- Principal at New Academy Canoga Park
- Charged with embezzling checks and depositing them in to a stock trading account
- LADA filed a 57-count indictment
- Fiszer pled guilty to one count of embezzling nearly \$1.5 million in public funds.
- Sentenced to five years in prison and to re-pay charter school

Charges Stemmed From:

- Allegedly obtained over 20 cashier's checks from school accounts and deposited them in Ameritrade account to trade stocks.

YM&C 24  
YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---


---

---

---

---

## Case Studies




### Emilio Vazquez

- Executive Director of Albor Charter School 2002-06
- Charged with 20 counts of financial fraud.
- Forgery, embezzlement, grand theft, perjury, conflicts of interest, and tax fraud.
- Vazquez fled the country but was recently extradited from Spain to Orange County.

Charges Stem From:

- FCMAT audit from 2007 alleged he funneled more than \$12 million in state funds to businesses owned by him, his wife, and friends.



25  
YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---


---

---

---

---

## Case Studies




### Ben Chavis

- Executive Director of AIMS Schools in Oakland. Charged with 6 counts of mail fraud and money laundering by the U.S. Attorney

Charges Stemmed From:

- FCMAT 2012 audit report found Chavis directed \$3.8 million from the schools to companies he owned for contracts not approved by the Charter School Board. Referred to federal prosecutors who determined Chavis applied for/received federal grants to pay leases on facilities in which his companies were the landlords. He allegedly hid the financial interest.



26  
YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---


---

---

---

---

## Case Studies




### Vielka McFarlane

- Celerity Educational Group's Founder and CEO Pled guilty in Federal Court to one count of conspiracy to misappropriate and embezzle public funds.

Charges Stemmed From:

- Allegedly misspent \$2.5 million in public funds – most of it re-directed to an office building in Ohio where she opened another charter school.
- Allegedly misused credit card for personal luxury goods, plane tickets for Obama Inauguration and trips to Miami and Panama, two customized recumbent bikes for her and spouse, and stays at high-end hotels.



27  
YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---

---

---

---

---

## Potential Criminal Liability



- Watch out for potential criminal liability or media/authorizer criticism arising from expenditures of public funds for these types of activities:
  - First or Business Class travel
  - Wine, beer or alcohol
  - Expensive meals, hotels, entertainment
  - Expenditures not directly related to school purposes (e.g. holiday party)
  - Travel for staff or board members not directly related to school purposes
  - Gifts (e.g., flowers)
  - Purchasing personal items (Clothes, guns and ammo, jewelry)
  - Car leases
  - Loans to employees
  - Renting an apartment/condo
  - Large employee expense accounts
  - Gym or golf club memberships
  - Gift cards
  - Payment of debts of other people/organizations
  - Payments to vendors with familial ties to charter school employees
  - Political contribution/donations



YOUNG, MINNEY & CORR, LLP

28

---

---

---

---

---

---

---

---

---

---

## FCMAT Findings



### Extraordinary Audit of a Charter School

- "The lack of internal controls ... and relationships between the founder, relatives and close associates and her other nonprofit public and private corporations created an environment that made it possible for the essential elements of fraud to occur, including motivation and opportunity"
- "... conflict of interest exists ... with charter officials participating in the decision-making process and exercising considerable influence that had major financial implications without full disclosure to the ... board."



YOUNG, MINNEY & CORR, LLP

29

---

---

---

---

---

---

---

---

---

---

## FCMAT Findings



### Extraordinary Audit of a Charter School (cont.)

- "... a business relationship exists between the founder and the ... schools as evidenced by contracts, lease agreements and consulting arrangements. There is conclusive documentation to support" violations of conflict of interest statutes.
- "The lack of consistency in meetings and the absence of board minutes to support the governing board's actions indicate a lack of board oversight, openness and the internal controls necessary to secure permanent records."



YOUNG, MINNEY & CORR, LLP

30

---

---

---

---

---

---

---

---

---

---

## FCMAT Findings



### Extraordinary Audit of a Charter School (cont.)

- "The charter school's governing board does not comply with its own financial reporting policy."
- "The governing board should ensure that all commercial warrants are reviewed during each board meeting and that bank accounts can be opened or closed only by board authorization."
- "More than one third of the (credit card) purchases lacked supporting documentation, log sheets, or approval from site administrators."



31

YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---

---

---

---

---

## DOJ Investigation



- For-profit corporation furnishes curriculum, admin and management services to non-classroom based charter schools.
- Settled with CA DOJ - \$168.5 million
- False Advertising (Bus & Prof Code 17500)
- Unfair Competition (Bus & Prof Code 17200)
- "Disseminating of false and misleading statements relating to their educational programs" ... "to induce members of the public to enroll in the educational programs offered by Defendants."



32

YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---

---

---

---

---

## DOJ cont.



### DOJ Accusations of False Statements Regarding:

- Student academic progress.
- Parent satisfaction rates.
- That schools' offer full range of course for UC and CSU.
- Flexibility and individualization of curriculum.
- Providing students with education at no cost.
- Class size



33

YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---


---

---

---

---


## CSA Findings



### CA State Auditor Report on a Charter School

- School “could not provide monthly financial reports...such as year-to-date cashflow...”
- “Nearly a quarter of the 225 expenditures we reviewed lacked both proper authorization and sufficient support.”
- “The Foundation could not demonstrate that it preauthorized 19 of the 20 debit card transactions we reviewed.”

34



YOUNG, MINNEY & CORR, LLP

---

---

---

---


---

---

---


---

## Other Related Issues



- Financial misconduct results in a loss of goodwill and trust in the community that often cannot be rebuilt
- Many charter schools that experience financial misconduct close, and if done knowingly or intentionally, District Attorneys are not afraid to prosecute
- Be careful to disclose issues of fraud or other financial misconduct properly. Determine what disclosures must or should be made to law enforcement.
- Ensure appropriate disclosures are made to banks and financial institutions before cash flow borrowing, facilities financings, or other financial transactions
- As educators, we have a responsibility to act as examples for our students.

35



YOUNG, MINNEY & CORR, LLP

---

---

---

---


---

---

---

---

## Transfers of Funds



Transfers of funds between schools operated by the same nonprofit corporation under attack by some authorizers.

- State auditor said such transfers were OK so long as certain conditions are met (temporary, no impact to education program expenditures of loaning school board approved, etc.)
- FCMAAT is more supportive of transfers than State auditor at least for independent study schools.


Transfers of funds and intellectual property from schools to CMO organizations under attack by some authorizers

Consult legal counsel before transferring funds to other charter schools or nonprofits, even nonprofits or school that are related through common governance or administration.

Do not use charter school funds for purposes other than operating a California public charter school

Use segregated private funds to develop out-of-state schools

36



YOUNG, MINNEY & CORR, LLP

---

---

---

---


---

---

---


---

## Politics of Money



Even where an expenditure of public funds is not criminal in nature, watch out for:

- Appearance of impropriety leading to investigations
- Authorizer board members may seek to substitute their judgment for that of your board members
- Expenses that will look bad in the newspaper


37  
YOUNG, MINNEY & CORR, LLP

---

---

---

---


---

---

---


---

## Ethics



Your culture will be set by the tone at the top.

What is modeled by those at the top will likely followed by other employees.


38  
YOUNG, MINNEY & CORR, LLP

---

---

---

---


---

---

---


---

## Ethical "Danger Zones"



Bad Actors don't typically start bad – it's a road a person goes down, often due to the following "danger zones":

- **Conflicting goals.** If forced to cut corners to attain performance goals or given objectives that they believe are unattainable, employees may feel pressured to compromise ethical standards and lose trust in their managers.
- **Fear of retaliation.** The fear of payback for doing the right thing is a powerful cause of inaction in organizations.
- **Avoidance.** When bad things go unpunished or are ignored, that can lead to even worse behavior. It sends the message "We don't care."
- **Rationalization.** The "Everybody's doing it" mindset can lead people into murky ethical waters.
- **Lowered thresholds.** With each unethical decision, the next one becomes easier. It's a slippery slope.
- **Euphemisms.** Using neutral terms to describe questionable actions (e.g., "creative accounting") is a subtle form of rationalization. (Source: Olson, Steven D., *Shaping an Ethical Culture*, Center for Ethics and Corporate Responsibility, Georgia State University.)


39  
YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---

---

---

## Managing Legal Requirements



- Whistleblower Protections
- Conflict of Interest Codes and Policies
- Trainings on Conflicts of Interest and Ethics



40

YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---

---

---

## Don't Make A Bad Situation Worse



- Labor Code 1102.5 prohibits retaliation by an employer against an employee under any of the following circumstances:
  - When the employee discloses information to a government or law enforcement agency based on reasonable cause to believe the information discloses a violation of a federal, state, or local law

\* NOTE: A government employee's report to the employee's own public employer constitutes disclosure of information to a government or law enforcement agency.



41

YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---

---

---

## Don't Make A Bad Situation Worse cont.



- For refusing to participate in an activity that would result in a violation of federal, state, or local law;
- For having exercised rights against retaliation in a former employment
- Because the employee is a family member of a person who has, or is perceived to have, engaged in legally-protected acts



42

YOUNG, MINNEY & CORR, LLP

---

---

---

---


---

---

---


---

## Internal Controls



- One key to fraud detection and deterrence is proper internal controls
  - Opportunity is created when internal controls are weak, there is a lack of oversight, or ineffective governance
  - Consult with your independent auditor regarding best practices
  - Obtain legal review, as well
  - Ensure Board knows it is ultimately responsible for everything that happens in the school
  - Conduct training for Board members and employees
- Consider adopting comprehensive fraud prevention system and/or fraud risk assessment
  - Your annual audit randomly samples transactions, it is not designed to review every transaction
  - Conduct regular internal audits of high risk areas like program, accounts payable and inventory

43



YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---


---

---

---

---


## Developing Appropriate Safeguards



The Top Ten Internal Controls Your School Must Have:

1. Checks and balances through proper segregation of duties
2. Reconciliation reports should be issued and reviewed/approved timely by management.
3. Do not allow school credit cards, or strictly control them
4. Board of Directors oversight, especially of Executive Director/Principal expenses
5. Fiscal policies and procedures
6. Limits on use of school assets
7. Strict controls on petty cash funds and other cash funds
8. Protect checks against fraudulent use
9. Protect cash and check collections through solid internal controls
10. Avoid related party transactions

44



YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---


---

---

---


---

## Who to Talk to When Issues Are Uncovered



1. **Legal Counsel-** If issues are discovered, or even if there is a suspicion of issues, contact your legal representation immediately. We will help you navigate the reporting obligations, the political landscape, and guide you on how to fix the issue.
2. **Your Board-** Your Board should be apprised of any issues so that they can work with you to develop a plan of action.
3. **Your independent financial auditor-** Not only is your auditor there to review your transactions, but they can also assist in addressing deficiencies in safeguards and, how to address the issues in your audit report.
4. **Your authorizing district liaison- only after contacting legal counsel first!** Let your authorizer know what the issue is, how it has been addressed, and how you will prevent it from happening again. You want them to find out from you, and not when they see the news on TV. Additionally, you want to position your school as a partner in fighting any financial misconduct.

45



YOUNG, MINNEY & CORR, LLP

---

---

---

---

---

---

---

---

---

---

## Addressing Bad Actors



- Gather facts first – watch out for slander/libel claims caused by acting before you have all the facts
- Limit the damage by stopping inappropriate expenditures
- Follow up with improvements to policies and training
- Reporting to CTC
- Reporting to law enforcement



YOUNG, MINNEY & CORR, LLP

46

---

---

---

---

---

---

---

---



THE CHARTER LAW FIRM

YOUNG, MINNEY & CORR, LLP  
916.648.1488 • INFO@MYCHARTERLAW.COM • WWW.MYCHARTERLAW.COM



**QUESTIONS AND RESPONSES**

**THANKS FOR ATTENDING TODAY!**

**SACRAMENTO OFFICE:**  
655 UNIVERSITY AVENUE  
SUITE 150  
SACRAMENTO, CA 95825

**LOS ANGELES OFFICE:**  
5200 LANKFOSHIM BLVD.  
SUITE 370  
NORTH HOLLYWOOD, CA 91601

**SAN DIEGO OFFICE:**  
591 CAMINO DE LA REINA  
SUITE 910  
SAN DIEGO, CA 92108

**WALNUT CREEK OFFICE:**  
300 YONACCO VALLEY ROAD  
SUITE 190  
WALNUT CREEK, CA 94596

---

---

---

---

---

---

---

---