



Failing to Fulfill Three Specific Duties Can Lead to Revocation or Charter Non-renewal

As a charter school board member, the taxpayers of your state and the parents of children enrolled in your school have placed a trust in you. That trust brings with it an obligation for you (and the board as a whole) to always act in the best interest of those you serve, to give due attention to *all* of the matters entrusted to the board's oversight, and to recognize that even though some authority has been vested in your board to carry out its responsibilities, it in turn, operates under the authority of others.

In governance-speak, we call these three obligations, *fiduciary responsibilities* or *duties*. Specifically, they are often referred to as:

- *the duty of loyalty,*
- *the duty of oversight,* and
- *the duty of obedience.*

They are non-negotiable. Failure to fulfill them can result in charter revocation or non-renewal (as in this month's Case In Point), and in extreme cases, civil and criminal liability. Given the importance of fulfilling these three duties, then, let's briefly discuss a few of their implications for your board.

Duty of loyalty. Your board should have policies by which it requires all board members to abide by ethical conduct at all times when functioning as board members, and it should require every board member to annually disclose any conflicts or potential conflicts of

interest in writing. The board should also have a policy requiring a member with a conflict to recuse himself from voting where such conflicts exist. All such recusals should be clearly recorded in the minutes. The board should be especially careful if board members and/or members of management are related to one another.

The duty of oversight. The board should require management to regularly report data or other evidence indicating *how well* the school is performing. These reports should cover everything the board is responsible for overseeing including, but not limited to, the school's student performance, financial position, compliance with statutes and regulations, risk management, enrollment, and so on. The board should evaluate all such reports *versus* rubber stamping them.

Duty of obedience. Here are a few things the board and the school must obey: the US Constitution (e.g., religious secularism is not permitted in charter schools), all pertinent Federal laws, state laws, regulations, local health and safety codes, and the school's own charter, bylaws, and policies. Besides reading the latter three documents, a board is wise to pursue regular training that helps it ensure that it is fulfilling its duty of obedience. And be sure to document all such training in the board's minutes. Doing so helps it prove that it made a reasonable effort to perform them, which is the standard under the law.

Board Self-Appraisal Questions/Recommendations

1. Does your board have written policies such as those described in the section, *duty of loyalty*?
2. Does the board *require* and *receive* reports from management that help it adequately perform the spectrum of oversight described in the section, *duty of oversight*?
3. Is the board deviating from its charter, bylaws, or policies or anything else in the section, *duty of obedience*?

Case in Point

BROKEN PROMISE

The San Diego Unified School District Board which authorizes 43 charter schools, voted August 2, 2011 to revoke the charter of one of the schools in its portfolio, Promise Charter School. What makes this particular revocation especially poignant--and highly unfortunate--is the fact that, according to one newspaper, Promise was **“one of the strongest academically performing charter schools in the state.”** (bold added)

The run-up to the district's decision is a somewhat convoluted story with both sides, the district and the charter school, alleging corruption, incompetence, and misgovernance. At the onset of school problems, some of Promise's parents had even demanded a district investigation. The case is illustrative of many things, not the least of which is that revocation can result from non-compliance with statutory and regulatory requirements ***even when a school is performing well academically.***

Given the school's academic performance, was it really necessary for the district to revoke the school's charter? The answer is debatable, but the laundry list of non-compliance issues was a lengthy one. According to various media reports, Promise Charter School:

- violated California's open meeting laws
- failed to prevent inappropriate relationships between a male teacher and his female students
- maintained faulty financial statements
- violated legal requirements pertaining to student suspensions
- violated its own rules about who should sit on its board

- violated state laws pertaining to conflicts of interest
- failed to report child abuse to CPS

Moreover, just a few months before the revocation, in what deserves to become a textbook example of what **NOT** to do if your authorizer is ever investigating your school, Promise's principal actually escorted the district's charter school manager off the premises--itself a violation of California's Education Code. This resulted in a sharply worded letter to the Promise board of directors, ordering it to “immediately confirm that [the] charter school will cease and desist from interfering with the district's rights and obligations in overseeing the charter school . . .”

The real losers are, of course, the 200 students who will now have to go to school elsewhere--probably a poorer performing one--a sad reality that could have been avoided had the board understood and fulfilled its three fiduciary responsibilities.

Sources:

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Dr. Brian L. Carpenter is widely regarded as one of the foremost authorities on charter school governance. Both of his books, *Charter School Board University* and *The Seven Outs: Strategic Planning Made Easy for Charter Schools* are used by schools, associations, and universities. For information on engaging Dr. Carpenter to conduct a board development retreat or to speak at your conference, call (989) 205-4182 or email him at Brian@BrianLCarpenter.com.

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