

June 13, 2012

Allison Magill
Special Education Advisor
California Charter Schools Association
250 E 1st St., Suite 1000
Los Angeles, CA 90012

Re: Your Request for Advice
Our file No. A-12-083

Dear Ms. Magill:

This letter responds to your request for advice, on behalf of the San Diego Countywide Special Education Authority and the Bay Area Special Education Joint Powers Authority, regarding the conflict-of-interest provisions of the Political Reform Act (the “Act”).¹ This advice is based on the facts provided in your request. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71; Section 83114.)

QUESTIONS

Are the SDCSEA and the BASEJPA government agencies, and are members of the SDCSEA’s and the BASEJPA’s boards of directors “public officials,” under the Act?

CONCLUSION

Both the SDCSEA and the BASEJPA are local government agencies that are required to adopt a conflict-of-interest code. Accordingly, officers and employees of both the SDCSEA and the BASEJPA, including members of the boards of directors, are “public officials” under the Act, are subject to the Act’s conflict-of-interest provisions, and may need to file statements of economic interests as designated employees in the adopted conflict-of-interest code.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

You are a representative of the California Charter Schools Association (the “CCSA”), which is a statewide organization that works to advance the charter school movement by providing resources and advocacy for member schools. The CCSA is currently acting as the administrator for the San Diego Countywide Special Education Authority (the “SDCSEA”) and the Bay Area Special Education Joint Powers Authority (the “BASEJPA”). As the administrator for both the SDCSEA and the BASEJPA, you seek advice regarding the application of the Act’s conflict-of-interest provisions to both of these entities.

The SDCSEA and BASEJPA are similarly-situated joint powers authorities made up of non-profit public benefit corporations operating charter schools. The purpose of these entities is to improve learning outcomes for students with disabilities by providing a forum for charter schools to share best practices and cost effective mechanisms for charter schools to share, finance, and reduce the costs of providing special education services to students with disabilities.

ANALYSIS

Pursuant to Regulation 18329.5(c):

“The Commission may, upon request, provide advice or technical assistance to a party for the purpose of determining whether that party is an agency as defined in [Sections] 82041 and 82049, and is therefore required to adopt and promulgate a Conflict of Interest Code pursuant to Government Code Section 87300. The Commission may also, upon request, provide advice or assistance to an agency concerning which positions should be designated in the agency’s Conflict of Interest Code through application of [Regulation] 18701.”

Under the Act, the term “agency” is defined as “any state agency or local government agency.” (Section 82003.) A “local government agency” is defined as:

“[A] county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.” (Section 82041.)

In determining whether or not an entity is a governmental agency, the Commission typically applies the analytical framework set forth in its opinion *In re Siegel* (1977) 3 FPCC Ops. 62. (*Weiss* Advice Letter, A-01-122.) However, the *Siegel* factors are not generally applicable if the entity is clearly a local government agency by virtue of the statute enabling the agency. (See *Takhtalian* Advice Letter, No. I-09-245; *Weiss* Advice Letter, *supra*; and *Crabb* Advice Letter, No. A-97-575.) In the past, we have repeatedly advised that an entity created under a joint powers agreement clearly falls under the Act’s definition of a “government agency” because, by its very terms, the Joint Exercise of Powers Act applies to entities formed by the agreement of two or more “public agencies” to jointly exercise their respective powers. (See

Sections 6500 and 6502; *Watts* Advice Letter, No. A-03-258; *Siegel* Advice Letter, No. A-81-03-015; and *Hopkins* Advice Letter, No. A-77-274.)²

As joint powers authorities, both the SDCSEA and the BASEJPA are local government agencies under the Act. Accordingly, officers and employees of the SDCSEA and the BASEJPA, including members of the boards of directors, are “public official” under that Act, are subject to the Act’s conflict-of-interest provisions, and may have to file statements of economic interests as designated employees in the adopted conflict-of-interest code.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Brian G. Lau
Counsel, Legal Division

BGL:jgl

² While we have previously determined that WestEd, an education think-tank established as a joint powers authority, was not a government agency subject to the Act, we reached this determination only because the organization was more appropriately characterized as a multi-state agency outside of the Act’s provisions, which are limited to California agencies and local agencies within the state. (*Donovan* Advice Letter, No. A-99-269.)