



Bella Mente
Montessori Academy

Board of Directors

Paul Mingardi, President
Caroline Veale, Secretary
Suraj Vijayakumar, Treasurer
Janet Figueroa, Member
Scott Moote, Member

Bella Mente Charter School
Meeting Agenda
November 28, 2017

Type of Meeting: Regular Meeting
Location:
1737 W. Vista Way
Vista, CA 92083

I. OPEN SESSION/REGULAR MEETING
(6:30-7:30pm)

Call to order, roll call and establishment of quorum

Public Comments/Community Members: Any member of the audience who wishes to hold and speak to an agenda item (or at the appropriate time, speak to an item not on the agenda) should complete a HOLD CARD and present it to the Board Secretary before Item 2A. Presentation by Community Members/Public Comments is held. In an effort to gain as much public input as possible, individual speakers will be limited to Three minutes or less.

II. PRESENTATIONS BY COMMUNITY MEMBERS/PUBLIC COMMENTS
(20 MINUTES TOTAL)

In an effort to gain as much public input as possible, individual speakers will be limited to THREE MINUTES OR LESS. 20 minutes total will be allotted for Item 2A. After 20 minutes the remainder of public comments will be heard before the conclusion of Board Business.

A. Items not on the agenda/Items for future discussion

III. APPROVAL OF AGENDA.

Recommended motion:

Approve the agenda for the November 28, 2017 Board of Directors Meeting.

Moved by_

Seconded by

Vote_

IV. DISCUSSION ITEMS

1. Annual Brown Act and Conflict of Interest Training provided by Merrick Wadsworth of Procopio, Cory, Hargreaves & Savitch LLP.

V. CONSENT CALENDAR/ROUTINE ITEMS OF BUSINESS

All items listed under the Consent Calendar are considered by the Board in one action. **There will be no discussion of these items** prior to the time the Board votes on the motion, unless members of the Board, staff, or public request specific items to be discussed and/or removed from the Consent Calendar.

1. Approval of Minutes from the November 14, 2017 Board of Directors Meeting
2. Approve/ratify recommended actions on the personnel activity list
3. Approve/ratify check registers

Executive Director's Recommendation: Approve Consent Calendar

Moved by_ Seconded by Vote

VI. ACTION ITEMS

1. Approve the addition of Tom Reilly to the BMMA Board of Directors in a member position.

Executive Director's Recommendation: Approve Action Item 1.

Moved by Seconded by Vote_

2. Approve the submission of the Bella Mente Montessori Academy Charter Renewal Petition to the Vista Unified School District

Executive Director's Recommendation: Approve Action Item 2.

Moved by_ Seconded by Vote_

3. Review and approve first interim financial report.

Executive Director's Recommendation: Approve Action Item 3.

Moved by Seconded by Vote_

4. Select Member to hold position of Treasurer.

Moved by Seconded by Vote_

VII. CLOSED SESSION-[None]

- 1. In accordance with Government Code Section 54957, the Board will meet in closed session to consider: PERSONNEL MATTERS-[None]**
- 2. In accordance with Government Code Section 54956.8, the Board will meet in closed session to consider: REAL ESTATE MATTERS- [None]**
- 3. In accordance with Government Code Section 54957.6, the Board will meet in closed session to consider: PUBLIC EMPLOYEE EVALUATION- [None]**
- 4. In accordance with Government Code Section 54956.96, the Board will meet in closed session to consider: CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW-[None]**

RECONVENE TO OPEN SESSION

VI. ACTION ITEMS CONSIDERED IN CLOSED SESSION

ADJOURNMENT- 8:30pm

Instructions for Presentations to the Board by Members of the Community

BMMA welcomes your participation at the School's Board meetings. The purpose of a public meeting of the Board of Directors ("Board") is to conduct the affairs of the School in public. We hope that you will visit these meetings often and your participation assures us of continuing community interest in our School. To assist you in speaking/participating in our meetings, the following guidelines are provided.

1. Agendas are available to all community members
2. Community members who wish to speak on any agenda items or under the general category of "Public Comment" will be given an opportunity to do so.
3. "Public Comment" is set aside for members of the community to raise issues that are not specifically on the agenda. However, due to public meeting laws (Brown Act), the Board can only listen to your issue, not respond or take action. These presentations are limited to three (3) minutes and total time allotted to non-agenda items will not exceed twenty (20) minutes. Exceptions to these time limits may be made at the discretion of the Board Chair. The board may give direction to staff to respond to your concerns or you may be offered the option of returning with a citizen requested agenda item.
4. With regard to items that are on the agenda, you may speak for up to (3) minutes when the Board discusses that item. Exceptions to this time may be made at the discretion of the Board Chair.
5. Community members may request in writing that a topic related to school business be considered for placement on a future agenda. Requests should be addressed to the Board Chair. If such an item is placed on the agenda and publicly noticed, the Board can respond, interact, and act upon the item.



RALPH M. BROWN ACT, AVOIDING CONFLICTS, AND BEST PRACTICES FOR CHARTER SCHOOL BOARD MEMBERS

Bella Mente Montessori Academy – November 28, 2017

Merrick A. Wadsworth, Procopio, Cory, Hargreaves & Savitch, LLP

*CV
JPM
Difficult*

Topics we will cover

- Roles and Responsibilities
- Running Public Meetings under the Brown Act
- Public Records
- Duty of Care
- Duty of Financial Oversight
- Duty of Loyalty (conflicts of interest)
- Best Practices/ Questions?

Organizational Structure (Brief Overview)

- Bella Mente Montessori Academy (the “Academy”) is a charter school operated by Bella Mente Charter School, a California nonprofit public benefit corporation. (Ed. Code, § 47604(a).)
- The Board of Directors of Bella Mente Charter School has a legal and fiduciary responsibility for the Academy.
 - The Academy is operated and managed by Bella Mente Charter School, which is governed by its Board of Directors.
- Directors are elected in accordance with the bylaws and charter.

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Board of Directors’ Role

- Overall role of the Board is to ensure long-term viability of the organization.
- Board monitors school performance and other data to inform its decisions.
- Board hires, compensates, and evaluates the Executive Director.

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Board of Directors' Role

- Board approves major educational and operational policies, such as:
 - Financial policies and procedures
 - Student/parent handbook and employee handbook
 - Health, safety, and emergency plan
 - Uniform Complaint Procedure
- Board approves major contracts (leases, loans, per financial policies).
- Board approves the annual budget.
- Board regularly reviews and monitors financial policies and procedures, budget, and finances to inform and evaluate resource allocation.

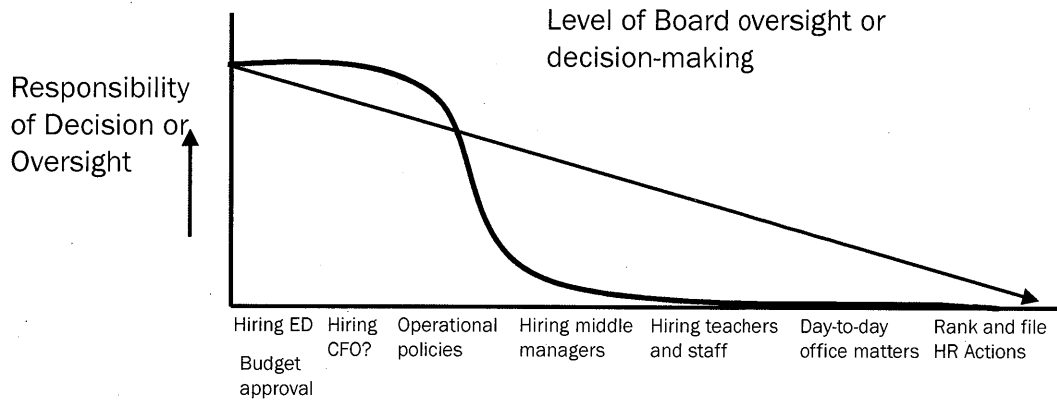
5

Role of Board Compared to the ED

- Board provides fiduciary oversight, and hires a leader (e.g. ED) to execute the day-to-day operations.
 - Board members should not get involved with day-to-day operations.
- The ED is accountable for implementing all Board policies.
- The charter, ED's contract, and/or policies further delineate roles and responsibilities, including delegated authority.
- Board supervises only the top 1 (or 2) employee(s).
 - Top employee supervises other employees.
 - Top employee should report to the Board regarding hiring, firing, layoffs, evaluations, personnel issues, etc.

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When does Board get involved?



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Ralph M. Brown Act

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Brown Act: Holding Meetings

- Do we have to comply with the Brown Act?
 - Academy charter and bylaws require compliance.
 - In the event of inconsistency, the Brown Act controls.
- Where can meetings be?
 - Within the territorial jurisdiction of the school (usually held at the school site).

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Brown Act: Holding Meetings

- Boards take action only at “meetings.”
- What is a meeting?
 - “Any congregation of a majority of the members of a legislative body ... to hear, discuss, or deliberate, or take action on any item.”
 - You may not, “outside a meeting ... use a series of communications ... directly or through intermediaries, to discuss, deliberate, or take action” (Gov. Code, § 54952.2)
- So...avoid inadvertent serial meetings through email communications.

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Brown Act: Holding Meetings

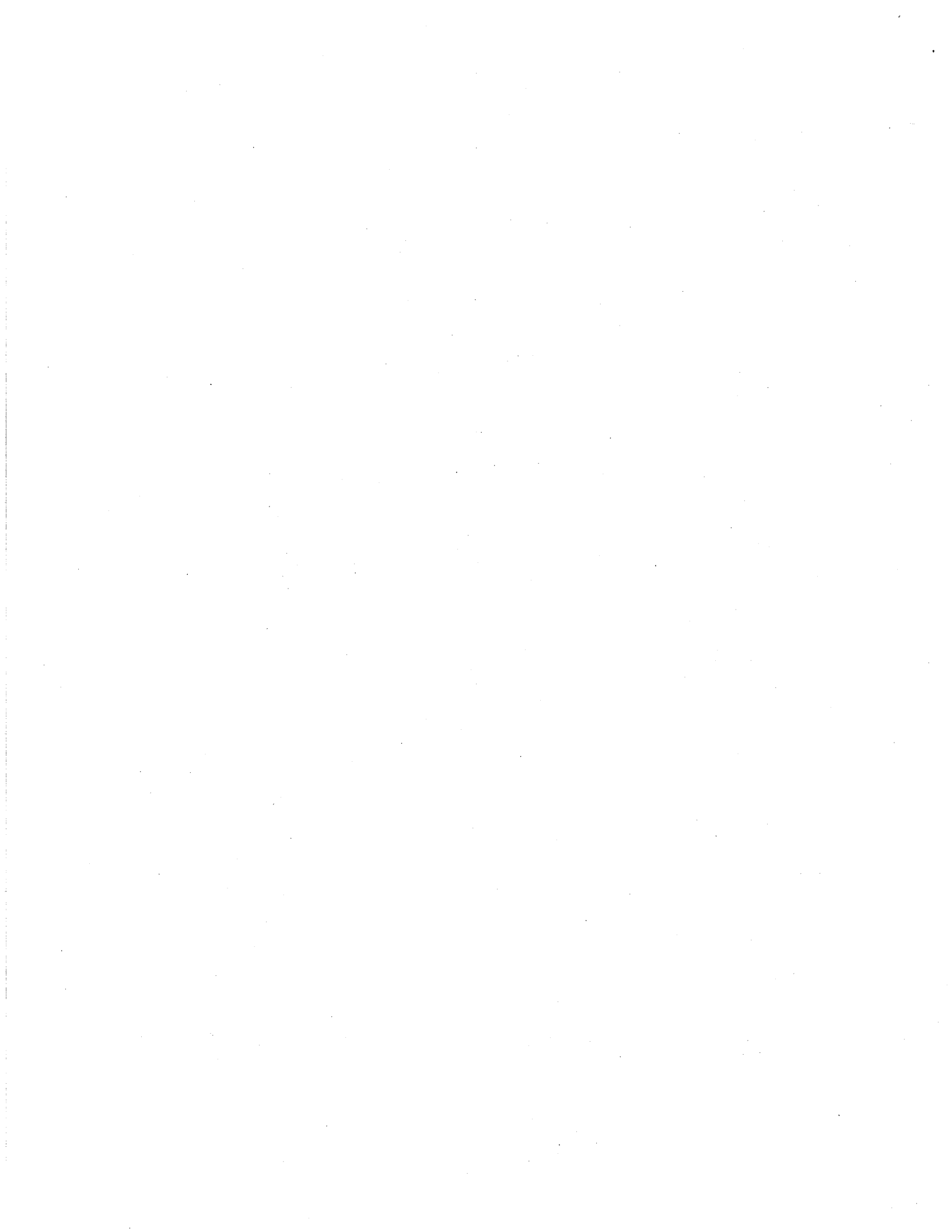
- Brown Act applies to standing committees created by the Board, even if just advisory (e.g. finance committee).
 - “Ad hoc” committees exempt, but only if composed of Board members only, less than a quorum, with a limited existence.
- Brown Act does not apply to working groups set up by the ED/Principal.
 - Much more flexible mechanism.
- Brown Act does not apply to a Parent Council or a School Site Council (composed of Principal, teachers, other staff, parents) that offer information, support, and resources to the Board.

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Brown Act: Holding Meetings

- “Types” of Meetings
 - “Regular” meetings require 72 hours posting notice.
 - “Special” meetings require 24 hours posting notice.
- Teleconferencing
 - Notice in the agenda.
 - Agenda must identify teleconference location, location must be accessible to the public, and agenda must be posted at the teleconference location.
 - Roll call vote.
 - Quorum must be within the jurisdiction.

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Brown Act: Holding Meetings

- What can the Board consider at a meeting? The Brown Act limits a meeting to what is on the posted agenda:
 - Brief general description of business to be transacted (20 words or less).
 - Post in publicly accessible place at/near location, and on the website.
 - Consent agenda for routine items.
 - Don't create "information only" vs. "action" items if you want flexibility.
 - Adding items to regular agenda—be careful!
- **Tip:** If you miss the 72-hour posting deadline to include an item on a regular agenda, you can still post a special meeting agenda with 24 hours notice for same time and place.

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Brown Act: Closed Sessions

- Brown Act limits closed sessions:
 - Statutory basis must be identified, such as . . .
 - Litigation (identify matter).
 - Personnel evaluation (identify position).
 - Collective bargaining strategy (identify negotiators).
 - Real estate negotiations (identify property).
 - Not for budget discussions, general planning.
 - What happens in closed session, stays in closed session; no public disclosure.
 - Use the safe harbor descriptions on your agendas!

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Brown Act: Rights of the Public

- Speak *before* action taken on any item (including closed session).
- Attend meeting without having to “sign in.”
- Publicly accessible location (with disabled access).
- May criticize the school, employees, and Board.
- Public comment can (and should) be time-limited.
- Public comment is not a conversation (brief response is okay; be careful)
- At regular meeting to address board on something *not* on agenda.
 - No non-agenda comment required at special meetings, but you can allow if you want to.
- Employees have a right to speak to Board w/o retaliation.

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Roberts Reves

Public Records Act

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Are the Academy's Records Open to the Public?

- Yes and no.
- Public Records Act (Gov. Code, § 6250 *et seq.*) applies to your charter school affairs.
- But lots of exempt records:
 - Identifiable student records (FERPA).
 - Personnel and medical records.
 - Pending litigation.
 - Preliminary drafts.
- But email that is kept (know your policy on this), and other records kept in ordinary course of business may be public.
 - *Email communication from personal accounts or personal devices*

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Fiduciary Duties

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What are they?

- A fiduciary relationship is any relationship between parties in which one of the parties has a duty to act “with the utmost good faith for the benefit of the other party”
- Directors owe fiduciary duties to the corporation:
 - Duty of care
 - Duty to provide financial oversight
 - Duty of loyalty

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Personal Liability (very rare)

- Board members can be personally liable when:
 - Acting outside the course and scope of duties (such as managing rank-and-file employees, rather than policy-making).
 - Breaching fiduciary duties.
 - Conflicts of interest.
 - Intentional or willful misconduct.
- However, there is broad nonprofit law immunity for volunteer board members.
 - Corp. Code § 5231(c)
- D&O insurance to defend claims against board members acting within scope of duties.
- However, even if board members not personally liable, school charter can be revoked.
 - Ed. Code, § 47607(c)(1)(C) (failure to comply with GAAP, fiscal mismanagement)

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Remember the Roles and Responsibilities of the Board?

- The Board makes policy, and is protected from liability when doing that.
- Board members should not get involved with day-to-day operations of the school.

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Duty of Care

- Act with care, skill, prudence, and diligence,
- Under the circumstances,
- Of a prudent person acting in a like capacity,
- With familiarity with those matters, and
- Considering the background and experience of the director.
 - Note – Director may rely on information, opinions, reports, or statements by officers of corporation whom director believes to be reliable and competent, counsel, committee, independent accountants, or other persons

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Duty of Care

- Be informed, stay informed, and be proactive in your role.
- Ask questions to seek clarity before voting.
- Listen to all perspectives and test your understanding of information and implications.
- Own your decision (it's yours after all!).

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Duty of Financial Oversight

- Charter schools face unique challenges requiring them to have one foot in the business world and the other foot in the public school finance world. Unique business model because strictly service-oriented, with limited financing sources.
- Board approves annual budget, which is the school's (and Board's) blueprint for the year, setting spending priorities and goals.
 - Through the year, Board monitors annual budget and finances.
 - Financial reports are presented to the board, such as balance sheet, income statement, cash flow.

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Duty of Financial Oversight

- Potential for charter revocation due to failure to meet GAAP, or “fiscal mismanagement.”
 - Ed. Code, § 47607(c)(1)(C)
- Chartering authority to assess and monitor fiscal condition of charter school.
 - Ed. Code, §§ 47604.32(d) & 47604.33(b)
- Periodic financial reports are required.
 - Ed. Code, § 47604.33(a)
- Annual, independent financial audits are required.
 - Ed. Code, § 47605(m)

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Duty of Loyalty

- Individuals in a position of public trust must avoid *conflicts of interest* that prevent them from fulfilling their duties in an impartial manner.
- For the Academy, there are three potential sources of law:
 - Corporations Code (Nonprofit Public Benefit Corporation Law).
 - Political Reform Act.
 - Government Code 1090 (likely not applicable).

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Duty of Loyalty – Corporations Code

- Directors must avoid “self-dealing” transactions.
- For *most* charitable nonprofits, the Corporation can still enter into the transaction if:
 - The transaction is beneficial and fair to the Corporation;
 - Majority of Board affirms the “fairness” of the transaction; and
 - Financially interested board member may be required to disclose and disqualify.

...but wait, there's more!

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Duty of Loyalty – Political Reform Act

- The Fair Political Practices Commission opined that charter schools must follow the Political Reform Act.
- The Academy must adopt a conflict of interest code.
- Board members and other designated officials must annually disclose their financial interests (the “Form 700”).
- Requires disclosure and disqualification from any decision that may materially affect the person’s financial interests.

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Duty of Loyalty – Political Reform Act

- “Conflicts of interest” under the Political Reform Act include the financial interests of a spouse or dependent.
- Civil and criminal penalties for violations.
- No defense or indemnity by school or insurers.

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Political Reform Act vs. Government Code 1090

- “Decision” vs. “Contract”
- Recusal vs. Strict Prohibition
- Definition of “financial interest”

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Best Practices

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Best Practices: How to Fulfill Fiduciary Duties

- Board meets regularly.
- Board receives governance training.
- Board knows how to identify a potential conflict of interest.
- Board members review documents, ask questions, stay informed.
- Board approves annual budget and gets regular updates.
- Board stays informed on financial condition of school.

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Best Practices: How to Fulfill Fiduciary Duties

- Board helps recruit diversity of expertise and experience on Board (education, politics, finance, business management, community outreach).
- School has system of evaluation for administrators/ teachers/ staff, and key vendors.
- Administrators/ teachers/ staff receive professional development.
- School has robust stakeholder communication system (e.g. key items available on website, active parent council).

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Best Practices: How to Fulfill Fiduciary Duties

- Management meets Board expectations.
- Management provides complete and timely communication to Board on key issues.
 - Agenda materials conform to Brown Act and mutual expectations of Board and management.
 - Periodic updates via “Friday Letter” or other vehicles.
 - All Board members generally get the same info at same time.
- ED manages day-to-day operations, is in charge of certain levels of contracting, hires/fires/disciplines employees.

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Questions (now or later)?



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BELLA MENTE CHARTER SCHOOL- AGENDA ITEM VI. 1.

TO: Board of Directors

FROM: Executive Director

DATE: November 28, 2017

SUBJECT: Board Member Addition to fill vacant position

ISSUE: Bella Mente currently has five board members but Treasurer, Suraj Vijayakumar, has shared his inability to continue his position due to a relocation of employment to Seattle

BACKGROUND: The bylaws of the Bella Mente Charter School require a minimum of three (3) Board of Directors and a maximum of five (5) Board of Directors with one parent member.

Paul Mingardi, Caroline Veale, Suraj Vijayakumar, Janet Figueroa and Scott Moote are the current members of the board serving three year terms.

Tom Reilly is the proud parent of one Bella Mente Adolescent child. Tom has been a supporter of Bella Mente since day one. On some days during the week, you may find him down in the garden or nutrition lab helping Mr. Hank or just hanging out with the chickens. He was born and raised right here in North County, and believes strongly in our community. He wants to see Bella Mente continue to grow and expand.

Tom has over thirty years of business experience, including 20 years in real estate sales. He has run companies for others, and currently owns two businesses of his own.

FISCAL IMPACT/ FUNDING SOURCE: none

RECOMMENDATION: Without reservation I recommend Mr. Reilly to fill the vacating position on the Bella Mente Board of Directors.

Respectfully Submitted,

Erin Feeley
Executive Director

