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March 30, 2017

By electronic mail

The Honorable Patrick O'Donnell
Chair, Assembly Education Committee
1020 N Street, Room 159
Sacramento, California 95814

RE: AB 1478 (Jones-Sawyer) – SUPPORT

Dear Assembly Member O'Donnell:

Public Advocates supports AB 1478 (Jones-Sawyer), the proposal to explicitly state that charter schools and the entities that manage them are subject to the California Public Records Act and the Ralph M. Brown Act, unless they are governed under the Bagley-Keene Open Meeting Act. These are good government laws by which regular public school district governing board members currently abide. AB 1478 also prohibits contracts between members of a charter school's governing board and the schools they govern.

Since its founding in 1971, Public Advocates has been a leading voice for educational equity in California. We served as lead counsel in the *Williams v. California* class action, which resulted in the 2004 landmark settlement establishing minimum standards for resources and educational opportunity in California's schools. We are also founding members of the Campaign for Quality Education, a coalition of grassroots community groups concerned with improving public education for our state's highest-need students.

AB 1478 is urgently needed in light of a recent report Public Advocates recently co-authored with the Center for Popular Democracy and the Alliance of Californians for Community Empowerment (ACCE), estimating that over \$100 million will be lost to charter school fraud in 2015 alone.¹

Public Advocates has heard from numerous low-income families whose children attend or seek to attend public charter schools throughout California. Children from low-income families are more likely to struggle in school and to fail to graduate; parents of these children are often eager to try charter schools in hopes of better outcomes. Unfortunately, many parents have had their initial hopes dashed when charter schools engage in practices that are not transparent or suggest self-dealing.

¹ Center for Popular Democracy, ACCE, & Public Advocates, *Risking Public Money: California Charter School Fraud* (2015), available at http://www.publicadvocates.org/sites/default/files/library/risking_public_money_-_california_charter_school_fraud.pdf.

For example, Public Advocates has been contacted by concerned parents who have experienced the following:

- A child was expelled from a charter school for violating the school’s detailed code of conduct. The code of conduct was ostensibly written in the charter, which was not available online. When the parent asked to see a copy of the charter, the charter school refused. **Making clear that charter school documents are subject to Public Records Act requests would eliminate this kind of problem.**
- A charter school decided to reduce instructional days from five days a week to four days a week – on Fridays, the students have “all-day study hall.” This decision was not made in an open, public meeting, was not publicly noticed, and parents were not invited to comment. Parents were simply told “the decision had been made.” Parents suspect the decision was made so that the school could save money by reducing staff hours. **These kinds of decisions should be made in publicly noticed open meetings.**
- A charter school entered into an exclusive contract with a software company that was founded by a board member of the charter school. Parents are unsure whether this software was chosen because it was a good choice for their children or to enrich the board member. **Following conflict-of-interest rules like other public school boards would help to assure parents that their school’s board is making decisions in the best interests of the students.**

The California Charter Schools Association opposed this bill and predecessor bills like it, such as AB 913 (Chau) from the 2013-14 session and AB 709 (Gipson) from the 2015-16 session. All of the CCSA’s arguments have no merit.

First, the CCSA has claimed that requiring charter schools to comply with the Brown Act would fail to accommodate access to board meetings of charter organizations that serve multiple counties. **This argument is specious; there is no prohibition on having an open meeting and teleconferencing. The Brown Act is a floor, not a ceiling.**

Next, the CCSA has claimed that while it is reasonable to expect all charter schools to comply with the Public Records Act, it is too burdensome to expect small schools to comply, and thus school districts should share the cost burden. **The PRA is not difficult to comply with and small school districts, including single-school districts, regularly comply. The PRA provides 10 days to respond and acknowledge the request, but imposes no obligation as to when schools have to produce the records.**

The main objection from CCSA appears to be to the conflicts-of-interest prohibition. AB 1478 would make clear that charter schools, as public schools, are subject to the conflict-of-interest provisions of Gov. Code 1090 *et seq.*, while CCSA wants most charter schools to instead be governed by the Corporations Code – a much more relaxed set of rules which *does* allow board members of nonprofit corporations to contract with themselves or with their family members. *See* Corp. Code § 5233(d). This Committee should adopt AB 1478’s approach for the following reasons.

Conflicts of interest and fraud in charter schools in California have been increasingly well-documented.² In 2007, the founder of a 60-campus charter school network was charged with using more than 5.5

² The founder of one charter school in California acted as both the school’s landlord and a board member. Employees received advances and bonuses paid with public funds. Another charter school is under investigation for \$3 million in possible transactions between the charter school and companies owned by the school’s founder. Center for Popular Democracy & Integrity in Education, *Charter School Vulnerabilities to Waste, Fraud, and Abuse* 26 (May 2014).

million dollars of the charter schools' funds to contract with his own company.³ In another case, a charter school paid a bookkeeping company owned by one of its board members \$60,000.⁴ That charter school, which had served predominantly black and Latino students in San Diego, had to shut down after it ran out of money.⁵

While the California Charter Schools Association claims that these “few isolated cases” have been “dealt with swiftly and summarily under current law,” the “current law” to which CCSA refers is exactly what CCSA wants changed. Indeed, in sponsoring SB 1317 in 2014, CCSA asked the legislature to change “current law” to *permit* this kind of conduct. CCSA has argued that charter schools should be allowed to “turn to board members...for loans and leases...” and be treated as nonprofit corporations, not public entities. Board members of nonprofits *can* enter into contracts with businesses in which they have an interest; public board members cannot.⁶ That is the same argument it made in an *amicus* brief recently in defense of charter school founders charged with embezzlement. The founders of Ivy Academia charter schools, Eugene Selivanov and Tatyana Berkovich, were charged with embezzling and misappropriating \$200,000 in public funds. The CCSA’s *amicus* brief in their favor argued that no crime had been committed. This was so, CCSA argued, because the charter school’s money was not “public moneys” at all, but “private moneys,” expended by a nonprofit “private entit[y],” and “private employees.”⁷ If the CCSA’s argument were adopted, self-dealing by charter school officials, such as Mr. Selivanov and Ms. Berkovich, would not be against the law. Charter school operators could engage in self-dealing with impunity. AB 1478 would prohibit this kind of conduct.

Most importantly, the CCSA’s position simply cannot square with the fact that charter schools are public schools under California law. CCSA has suggested that Government Code 1090, the public-entities conflict-of-interest provision, should not apply to charter school officials because they are not “elected officials.” However, Gov. Code § 1090 does not govern solely elected officials but any public employee, defined very broadly. What it states is simple and makes sense: “...state, county, district, judicial district, and city officers *or employees* shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.” (emphasis added). And its scope is broad: “As used in this article, ‘district’ means any agency of the state formed pursuant to general law or special act, for the local performance of governmental...functions...” CCSA itself does not dispute that charter schools are public schools. The new LCFF legislation, applauded by charter schools, provides charter schools with just as much per-pupil money from the state as school districts receive. And CCSA recently sued the West Contra Costa Unified School District, under the theory that, because charter

³ Maeve Reston and Mitchell Landsberg, *Charter schools' founder indicted*, LOS ANGELES TIMES, Sept. 5, 2007, available at <http://articles.latimes.com/2007/sep/05/local/me-charter5>

⁴ Helen Gao, *District revokes Randolph charter, Audit found fiscal mismanagement*, U-T SAN DIEGO, July 12, 2006, available at http://www.utsandiego.com/uniontrib/20060712/news_1m12charter.html

⁵ *Id.*

⁶ A self-dealing transaction by a nonprofit director is allowed if the transaction for the corporation’s “own benefit,” the corporation believes that the transaction was “fair and reasonable to the corporation,” and the board “authorized or approved the transaction in good faith” by a majority vote, not including the interested director. Corp. Code § 5233(d)(2). By contrast, a member of a public body or board “shall not be financially interested in any contract made by...any body or board of which they are members.” Gov. Code § 1090 (emphasis added).

⁷ “[T]he Legislature expressly allowed charter schools to be operate [sic] by nonprofit corporations formed and organized pursuant to the Nonprofit Public Benefit Corporation Law (Corp. Code §5110 et seq.) By inviting private entrepreneurs into the world of public education, the California legislature purposefully injected the potential for business practices wholly foreign to the normal public education bureaucracy...” *Amicus Brief of the California Charter Schools Association, People v. Selivanov & Berkovich*, Case NO. BA 372244 (Sup. Ct. Los Angeles County) (filed Oct. 4, 2013), available at <http://laschoolreport.com/wp-content/uploads/2013/10/13-09-30-CCSA-Amicus-brief-Final.pdf> CCSA

schools are *public schools*, they should receive just as much money as district schools get from a district-issued bond.⁸

Charter schools cannot have it both ways. They cannot insist on a right to be equally funded by the State and by districts, equally entrusted with the critical, constitutionally-mandated duty to provide a public education to California's youth, and the millions of taxpayer dollars that come with taking on that duty, while *also* insisting that they are not required to treat that public money with as much care and oversight as other public entities must.

The people who rely on public schools – disproportionately low-income families of color, including immigrant families – expect and trust public schools to be more accountable to the public than private companies are. And while Californians understand that charter schools are free to innovate in their educational programs, they believe them to be, ultimately, *public* schools, which exist to serve the public and not to enrich “private entrepreneurs.”⁹

Transparency and accountability are especially important when it is the public education of our highest-need youth that is at stake. For these reasons, Public Advocates supports AB 1478, and urges your leadership in ensuring its passage.

Very truly yours,



Liz Guillen
Director of Legislative & Community Affairs

Cc: Assembly Education Committee
Assembly Member Reginald Jones-Sawyer

⁸ See Complaint, *California Charter Schools Assoc. v. West Contra Costa Unified School Dist.* Case No. C-14-00901 (Contra Costa Sup. Ct.) (filed May 6, 2014).

⁹ CCSA Amicus Brief, *supra* note 6.