

CHARTER SCHOOLS

LEGAL COMPLIANCE MANUAL

CHARTER SCHOOLS

Introduction

In 2001, the Minnesota Legislature amended Minn. Stat. § 124D.10. *See* 2001 Minn. Laws, 1st Sp. Sess. ch. 6, art. 2, §§ 20-26. It specifically made charter schools subject to many statutes that apply to school districts.

It also mandated that the audits of charter schools be conducted in compliance with Minn. Stat. § 6.65, which mandates legal compliance audits and the promulgation of this Legal Compliance Audit Guide. Minn. Stat. § 124D.10, subd. 8(i).

In response to these legislative directives, this section 9 has been added to the Legal Compliance Audit Guide. Please note that charter schools must also comply with the Uniform Financial Accounting and Reporting Standards (UFARS) for Minnesota schools. *See* section 8.

Minn. Stat. Section	CHARTER SCHOOLS	Yes	No	Workpaper Reference
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Part I. Conflicts of Interest – Charter School Specific Provisions				
§ 124D.10, subd. 4a	- A member of a charter school board of directors is prohibited from serving as a member of the board of directors or as an employee or agent of or a contractor with a for-profit entity with whom the charter school contracts, directly or indirectly, for professional services, goods, or facilities.			
	- The conflict of interest provisions under Minn. Stat. § 124D.10, subd. 4a, do not apply to compensation paid to a teacher employed by the charter school who also serves as a member of the board of directors.			
	- The conflict of interest provisions under Minn. Stat. § 124D.10, subd. 4a, do not apply to a teacher who provides services to a charter school through a cooperative formed under Minn. Stat. ch. 308A when the teacher also serves on the charter school board of directors.			
	A. If a member of the charter school board of directors serves as a member of the board of directors or as an employee or agent of or a contractor with a nonprofit entity with whom the charter school contracts, directly or indirectly, for professional services, goods, or facilities:			
	1. Did the member of the charter school board of directors disclose all potential conflicts to the Commissioner of Education?			

Part II. Contracts Generally				
§§ 124D.10, subd. 8(i); 471.87; 471.88, subd. 1	- Unless a statutory exception applies, a public officer who is authorized to take part in any manner in making any sale, lease, or contract in official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit therefrom.			
	- The governing body may contract for goods or services with an interested officer only by unanimous vote. <u>See A, infra.</u> In addition to the unanimous vote, one of the statutory exceptions must apply. <u>See B, infra.</u>			
§§ 124D.10, subd. 8(i), & 471.88, subd. 1	A. Unanimous Approval			
	If there were any transactions between the governing body and an interested officer, did the governing body approve the transaction by unanimous vote?			
	Note: All <u>members</u> present, except the interested officer, must vote in order to produce a unanimous vote.			
§§ 124D.10, subd. 8(i), & 471.88, subd. 2	B. Statutory Exceptions			

Minn. Stat. Section	CHARTER SCHOOLS	Yes	No	Workpaper Reference
	1. Designation of Bank or Savings Association			
	If the transaction involved the designation of a bank or savings association as an authorized depository for public funds and as a source of borrowing:			
	a. Did the interested officer disclose to the governing body that he or she was a director or employee of the bank or savings association?			
	b. Was such disclosure entered into the minutes of the governing body's meeting prior to the first designation of the bank or savings association as a depository or at the time of the interested officer's election, whichever was later?			
§§ 124D.10, subd. 8(i), & 471.88, subd. 3	2. Designation of Official Newspaper			
	If a transaction involved the designation of an official newspaper or publication of official matters therein:			
	a. Was the newspaper in which the officer had an interest the only newspaper complying with statutory or charter requirements relating to designation or publication?			
§§ 124D.10, subd. 8(i), & 471.88, subd. 4	3. Stockholder of Cooperative Association			
	If the transaction involved a contract with a cooperative association:			
	a. Was the officer a shareholder or stockholder and not an officer or manager of the cooperative association?			
§§ 124D.10, subd. 8(i), & 471.88, subd. 5	4. Contracts That Do Not Need to Be Bid			
	If an interested officer entered into a contract for goods and services with the governing body:			
	a. Was the contract one that did not need to be bid? (See discussion of contracts that are subject to bidding on page 4-1.)			
§§ 124D.10, subd. 8(i), & 471.89, subd. 2	b. Did the governing body, prior to performance of the contract or contracts, adopt a resolution setting forth the essential facts and determining that the contract price was as low or lower than the price at which the commodity or service could be obtained elsewhere?			
§§ 124D.10, subd. 8(i), & 471.89, subd. 3	c. Prior to payment of the contract, did the involved officer file with the clerk of the governing body an affidavit stating:			

Minn. Stat. Section	CHARTER SCHOOLS	Yes	No	Workpaper Reference
	(1) the name of the officer and office held;			
	(2) an itemization of the commodity or services furnished;			
	(3) the contract price;			
	(4) the reasonable value;			
	(5) the interest of the officer in the contract; and			
	(6) that, to the best of his/her knowledge and belief, the contract price was as low or lower than the price at which the commodities or services could have been obtained from other sources?			
§§ 124D.10, subd. 8(i), & 471.89, subd. 2	d. If the contract was entered into under emergency conditions, did the governing body adopt such a resolution prior to payment of the claims in which the facts of the emergency are also stated?			
§§ 124D.10, subd. 8(i), & 471.88, subd. 6	5. Contract with Fire Department			
	If the governing body entered into a contract with a fire department in which an interested officer was a member:			
	a. Was the fire department a volunteer fire department?			
	b. Was the contract for payment of compensation or payment of retirement benefits?			
§§ 124D.10, subd. 8(i), & 471.88, subd. 12	6. Contract for Construction Materials or Contracting Services			
	If an interested officer contracted with the government unit to provide construction materials or services, or both:			
§§ 124D.10, subd. 8(i), & 471.88, subd. 12	a. Was the contract done by a sealed bid process?			
	b. Does the unit have a population of 1,000 or less according to the last federal census?			
	c. When the question of the contract came before the unit for consideration, did the officer refrain from voting?			
§§ 124D.10, subd. 8(i), & 471.88, subd. 13	7. Contract for Renting Space			

Minn. Stat. Section	CHARTER SCHOOLS	Yes	No	Workpaper Reference
	If a charter school officer rented space in a charter school facility, was the rate commensurate with that paid by other members of the public?			
§§ 124D.10, subd. 8(i), & 471.88, subd. 15	8. Contract or Franchise Agreement for Utilities			
	If the charter school has entered into a contract or franchise agreement with a utility for the provision of utility services and the board member is an employee of the utility:			
	a. Did the board member abstain from voting on any official action relating to the contract or franchise agreement?			
	b. Did the board member disclose the reason for the abstention in the official minutes of the council meeting?			
§ 123B.52, subd. 5	9. If a member of the board contracted with, worked for, or furnished supplies to the charter school, were the contracts or transactions included in the exceptions above (B1-8)?			

Part III. Purchase of Merchandise				
§§ 124D.10, subd. 8(i), & 15.054	A. Officers and employees of a charter school are prohibited from selling or buying property or materials owned by the charter school. <u>Employees</u> may make purchases from the charter school if the following criteria are met.			
	For all purchases:			
	1. Was the property or materials purchased by the employee not needed for charter school purposes?			
	2. Was the purchase made through sealed bids or public auction?			
	3. Was the employee <u>not</u> directly involved with the sealed bid or auction process?			
	4. Was the applicable “notice” law followed, and did the same require at least one week of published notice?			

This section does not apply to property or materials acquired or produced by charter schools for sale to the general public in the ordinary course of business.

Part IV. Designation of Depository				
§ 124D.10, subd. 8(i)	Pursuant to Minn. Stat. § 124D.10, subd. 8(i), charter schools are subject to and must comply with §§ 118A.01, 118A.02, 118A.03, 118A.04, 118A.05, and 118A.06.			

Minn. Stat. Section	CHARTER SCHOOLS	Yes	No	Workpaper Reference
§ 118A.01, subd. 4	“Public funds” for the purpose of this section means all general, special, permanent, trust, or other funds, regardless of source or purpose, held or administered by a charter school, unless otherwise restricted. Minn. Stat. § 118A.01, subd. 4.			
§ 118A.02, subd. 1	A. In the case of a charter school:			
	1. Has each depository of public funds been designated by the charter school’s governing body, or by its treasurer or chief financial officer, if the charter school has authorized them to make such a designation?			
§ 118A.01, subd. 3	2. Is each depository one of the following:			
	a. a savings association;			
	b. a commercial bank;			
	c. a trust company;			
	d. a credit union; or			
	e. an industrial loan and thrift company?			

Part V. Insuring or Securing Deposits				
§ 118A.03, subs. 1 & 3	A. If a charter school desires to deposit an amount in excess of deposit insurance, it must obtain a bond or collateral which, when computed at its market value, shall be at least ten percent more than the amount of the excess deposit.			
	B. Review the general principles of FDIC coverage in section 1 and complete the spreadsheet in this section to determine the amount of the charter school’s funds that are not insured and thus need to be either bonded or collateralized. Deposits held by credit unions are covered by separate deposit insurance rules promulgated by the National Credit Union Administration (NCUA).			
	C. Has the spreadsheet been completed? (<u>See</u> page 9-15.)			

Part VI. The Bond and Collateral				
	A. If a bond was furnished by the depository to the charter school, answer the following question:			
§ 118A.03, subd. 1	1. Was the bond executed by a corporate surety company authorized to do business in the state?			
	B. If the depository assigned collateral to the charter school, answer the following questions:			

Minn. Stat. Section	CHARTER SCHOOLS	Yes	No	Workpaper Reference
§ 118A.03, subd. 2	1. Was the collateral one of the following:			
	a. U.S. government treasury bills, notes, or bonds;			
	b. issues of a U.S. government agency or instruments that are quoted by a recognized industry quotation service available to the government entity;			
	c. a general obligation of a state or local government, with taxing powers, rated "A" or better;			
	d. a revenue obligation of a state or local government, with taxing powers, rated "AA" or better;			
	e. unrated general obligation securities of a local government with taxing powers pledged as collateral against funds deposited by that same local government entity;			
	f. an irrevocable standby letter of credit issued by a Federal Home Loan Bank accompanied by written evidence that the Federal Home Loan Bank's public debt is rated "AA" or better by Moody's or Standard and Poor's; or			
	g. time deposits insured by a federal agency?			
§ 118A.03, subd. 7	2. Was the collateral placed for safekeeping:			
	a. in a restricted account at the Federal Reserve Bank; or			
	b. in an account at a trust department of a commercial bank or other financial institution not owned or controlled by the depository?			
§ 118A.03, subd. 7	3. Did the charter school approve of the selection of the safekeeping entity?			
§ 118A.03, subd. 4	4. Was the collateral assignment in writing?			
	5. Did the assignment provide that, upon default, the depository shall release the collateral pledged to the charter school on demand?			
§ 118A.03, subd. 3	C. Collateral pledged must equal at least ten percent more than the uninsured and unbonded amount on deposit. The depository may, at its discretion, furnish both a bond and collateral aggregating the required amount.			
	1. If a bond was used or standby letters of credit issued by Federal Home Loan Banks were pledged, was the amount of excess deposit less than or equal to the amount of the bond or standby letters of credit?			
	2. If other collateral was pledged, was the amount of collateral at least ten percent more than the uninsured amount on deposit?			

Minn. Stat. Section	CHARTER SCHOOLS	Yes	No	Workpaper Reference
[12 U.S.C. § 1823(e)]	D. Assignment [Federal Statutory Requirements]			
	1. Was the written assignment approved by the depository's board of directors or loan committee?			
	2. Was the assignment an official record of the depository?			

Part VII. Public Investments				
§ 118A.05, subd. 2	A. Were all repurchase agreements and reverse repurchase agreements <u>only</u> entered into with:			
	1. a financial institution qualified as a depository of public funds;			
	2. any other financial institution which is a member of the Federal Reserve System <u>and</u> whose combined capital and surplus equals or exceeds \$10,000,000;			
	3. a primary reporting dealer in United States government securities to the Federal Reserve Bank of New York; or			
	4. a securities broker-dealer licensed pursuant to chapter 80A, or an affiliate of it, regulated by the Securities and Exchange Commission and maintaining a combined capital and surplus of \$40,000,000 or more, exclusive of subordinated debt?			
§ 118A.06	B. Are all investments held in safekeeping? If so:			
	1. Is the government entity's ownership of all securities in which the fund is invested evidenced by written acknowledgments identifying the securities by:			
	a. the names of the issuers?			
	b. maturity dates?			
	c. interest rates?			
	d. CUSIP numbers or other distinguishing marks?			
	C. Were the securities sold or pledged under the repurchase agreement or reverse repurchase agreement permissible direct investments under Minn. Stat. § 118A.04 (see L and M below)?			
§ 118A.05, subd. 2	D. Were all reverse repurchase agreements only entered into:			
	1. for a period of 90 days or less; and			
	2. only to meet short-term cash needs and not to generate cash for investments?			
§ 118A.05, subd. 3	E. Were all securities lending agreements (including custody agreements) entered into only with:			

Minn. Stat. Section	CHARTER SCHOOLS	Yes	No	Workpaper Reference
	1. a financial institution qualified as a depository having a principal executive office in Minnesota; or			
	2. a financial institution which is a member of the Federal Reserve System and whose combined capital and surplus equals or exceeds \$10,000,000, and which has a principal executive office in Minnesota?			
	F. Did the custodian or entity operating the securities lending program only enter into securities lending transactions with those entities identified in Part VII.A. (above)?			
§ 118A.05, subd. 5	G. Were all guaranteed investment contracts or agreements only entered into with an issuer or guarantor:			
	1. that was a U.S. commercial bank, a domestic branch of a foreign bank, a U.S. insurance company, its Canadian subsidiary, or the domestic affiliates of any of the foregoing; <u>and</u>			
	2. whose credit quality for long-term and short-term unsecured debt was rated in one of the highest two categories by a nationally recognized rating agency?			
	H. Did all guaranteed investment contracts give the charter school withdrawal rights in the event the issuer's or guarantor's credit quality was downgraded below "A"?			
§ 118A.05, subd. 4	I. Did the charter school only invest in shares of a Minnesota joint powers investment trust whose investments were restricted to securities described in Minn. Stat. §§ 118A.04 and 118A.05?			
	J. Mutual Funds			
	Did the charter school only invest in shares of an investment company that met the criteria in either 1 or 2 below:			
	1. a. registered under the Federal Investment Company Act of 1940;			
	b. whose shares were registered under the Federal Securities Act of 1933;			
	c. whose fund received the highest credit rating;			
	d. that was rated in one of the two highest risk rating categories by at least one nationally recognized statistical rating organization; <u>and</u>			
	e. that only invests in financial instruments with a final maturity no longer than 13 months?			
	2. a. registered under the Federal Investment Company Act of 1940;			
	b. which holds itself out as a money market fund meeting the conditions of SEC Rule 2a-7; <u>and</u>			

Minn. Stat. Section	CHARTER SCHOOLS	Yes	No	Workpaper Reference
	c. is rated in one of the two highest rating categories for money market funds by at least one nationally recognized statistical rating organization?			
	K. Did the charter school only invest in units of a short-term investment fund:			
	1. established and administered pursuant to regulation 9 of the Comptroller of the Currency; and			
	2. in which investments are restricted to securities described in Minn. Stat. §§ 118A.04-.05?			
§ 118A.04	L. Were all other funds invested in instruments which met at least one of the following criteria:			
	1. In governmental bonds, notes, bills, mortgages, and other securities, which were direct obligations or are guaranteed or insured issues of the United States, its agencies, its instrumentalities, or organizations created by an act of Congress, excluding mortgage-backed securities defined as "high risk" (see Section M - Mortgage-Backed Securities);			
	2. In a general obligation of a state or local government with taxing powers which was rated "A" or better by a national bond rating service;			
	3. In a revenue obligation of a state or local government with taxing powers which was rated "AA" or better by a national bond rating service;			
	4. In a general obligation of the Minnesota Housing Finance Agency which was a moral obligation of the State of Minnesota and is rated "A" or better by a national bond rating service;			
§ 118A.04, subd. 4	5. In commercial paper issued by a United States corporation or its Canadian subsidiary and that:			
	a. was rated in the highest quality category by at least two nationally recognized rating agencies, <u>and</u>			
	b. matures in 270 days or less;			
§ 118A.04, subd. 5	6. In time deposits fully insured by the Federal Deposit Insurance Corporation;			
	7. In bankers' acceptances issued by United States banks; or			
§ 118A.04, subd. 7	8. In its own temporary obligations issued under Minn. Stat. §§ 429.091, subd. 7 (special assessments); 469.178, subd. 5 (tax increment bonds); or 475.61, subd. 6?			
§ 118A.04, subd. 8	Note: A debt service fund can purchase any issue payable from the fund.			

Minn. Stat. Section	CHARTER SCHOOLS	Yes	No	Workpaper Reference
§ 118A.04, subd. 2	M. Mortgage-Backed Securities			
	Charter schools may only purchase mortgage-backed securities that are direct obligations or guaranteed or insured issues of the United States, its agencies, its instrumentalities, or organizations created by an act of Congress.			
§ 118A.04, subds. 2 & 6	Mortgage-backed securities purchased shall not be “high risk.” Minn. Stat. § 118A.04, subd. 6, states “high risk mortgage-backed securities” are:			
	1. interest-only or principal-only mortgage-backed securities; and			
	2. any mortgage derivative security that:			
	a. has an expected average life greater than ten years; or			
	b. has an expected average life that:			
	(1) will extend by more than four years as the result of an immediate and sustained parallel shift in the yield curve of plus 300 basis points, or			
	(2) will shorten by more than six years as the result of an immediate and sustained parallel shift in the yield curve of minus 300 basis points; or			
	c. will have an estimated change in price of more than 17 percent as the result of an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.			
	3. Were all mortgage-backed securities purchased by the government entity after August 1, 1993, not “high risk?”			

Part VIII. Broker Acknowledgment Certification

§ 118A.04, subd. 9	A. Annually, prior to completing an initial investment transaction with each broker, did the charter school provide to that broker a written statement of investment restrictions?			
	B. Did the broker acknowledge receipt of the investment restrictions and agree to handle the charter school’s account in accordance with the restrictions?			
	C. Did the charter school retain documentation of compliance with A and B above?			

Part IX. Claims and Disbursements - General Provisions

§ 124D.10, subd. 8(i)	- Pursuant to Minn. Stat. § 124D.10, subd. 8(i), charter schools are subject to and must comply with Minn. Stat. §§ 471.38, 471.391, 471.392, and 471.425.			
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Minn. Stat. Section	CHARTER SCHOOLS	Yes	No	Workpaper Reference
§ 471.38, subd. 1	A. Has every person or the person's agent claiming payment put such claim in writing (which includes an electronic transaction record) in items?			
§ 471.38, subd. 1	B. Has each declaration for payment (described below) been signed to the effect that such account, claim, or demand is just and correct and that no part of it has been paid?			
§ 471.38, subd. 2	Note: The provisions of this section do not apply to any claim or demand for an annual salary or fees of jurors or witnesses, fixed by law, nor to the salary or wages of any employee whose salary or wages have been fixed on an hourly, daily, weekly, or monthly basis, by the governing board of the municipality, and which is now authorized by law to be paid on a payroll basis.			
§ 471.391, subd. 1	<p>Declaration Form - The declaration is sufficient if in the following form: "I declare under the penalties of law that this account, claim or demand is just and correct and that no part of it has been paid.</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">(Signature of Claimant)</p>			
§ 471.391, subd. 2	The check or order-check by which the claim is paid may have printed on its reverse side, above the space for endorsement thereof, the following statement: "The undersigned payee, in endorsing this check (or order-check) declares that the same is received in payment of a just and correct claim against the [charter school], and that no part of it has heretofore been paid." When endorsed by the payee named in the check or order-check, such statement shall operate and shall be deemed sufficient as the required declaration of the claim.			
§ 471.392	C. Any person who willfully and falsely makes the declaration provided for is guilty of a felony.			
§ 471.425, subd. 2	D. Prompt Payment of Local Government Bills			
	<p>- Standard payment period is:</p> <ul style="list-style-type: none"> - 35 days from receipt for governing boards that meet at least once a month; - 45 days from receipt of goods or services or invoice, whichever is later, for governing boards that do not meet at least once per month; and - 45 days from receipt for joint powers entities. 			
§ 471.425, subd. 2	1. Were all bills paid within the time period set by the terms of the contract or within the standard payment period?			
§ 471.425, subd. 4	The charter school must pay interest on bills not paid in a timely manner. The interest rate is 1½ percent per month or part of a month. The minimum monthly interest on a bill of \$100 or more is \$10.			
§ 471.425, subd. 4	2. For bills paid after the time period set by the contract or the standard payment period, did the charter school calculate and pay interest as required by law?			

Minn. Stat. Section	CHARTER SCHOOLS	Yes	No	Workpaper Reference
§ 471.425, subd. 4a	3. Did each contract between the charter school and a prime contractor require the prime contractor to pay subcontractors within ten days of receipt of payment from the charter school or pay interest at the rate of 1½ percent per month or any part of a month?			
	Note: The interest penalties in these questions do not apply to good faith disputes.			

§§ 124D.10, subd. 8(i), & 471.38, subds. 3 & 3a	Part X. Claims and Disbursements - Electronic Funds Transfer			
	A. Charter schools may make electronic funds transfers under certain conditions.			
	1. A charter school may make electronic funds transfers for:			
	a. a claim for payment from an imprest payroll bank account or investment of excess money;			
	b. payment of tax or aid anticipation certificates;			
	c. payment of contributions to a pension or retirement fund;			
	d. vendor payments; and			
	e. payment of bond principal, bond interest, and a fiscal agent service charge from the debt redemption fund.			
	B. Did the charter school use electronic funds transfers only for the above enumerated transactions?			
	C. Did the charter school enact a plan containing the following policy controls requiring:			
	1. annual delegation of authority to make electronic funds transfers to a designated business administrator?			
	2. the disbursing bank to keep a certified copy of delegation of authority?			
	3. identification of the initiator of each electronic transfer?			
	4. the initiator to document the request and obtain approval for each transfer from the designated business administrator, prior to the transaction?			
	5. written confirmation of each transaction within one business day?			
	6. a list of transactions to be submitted to the charter school's board at the next regular meeting after the transaction?			

Minn. Stat. Section	CHARTER SCHOOLS	Yes	No	Workpaper Reference
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Part XI. Related Party Lease Costs				
§ 124D.10, subd. 26	For purposes of this Part:			
	- A “related party” is an affiliate or close relative of the other party in question, an affiliate of a close relative, or a close relative of an affiliate.			
	- “Affiliate” means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.			
	- “Close relative” means an individual whose relationship by blood, marriage, or adoption to another individual is no more remote than first cousin.			
	- “Person” means an individual or entity of any kind.			
	- “Control” includes the terms “controlling,” “controlled by,” and “under common control with” and means the possession, direct or indirect, of the power to direct or cause the direction of the management, operations, or policies of a person, whether through the ownership of voting securities, by contract, or otherwise.			
§ 124D.10, subd. 23a	A. If the charter school entered into a lease of real property with a related party on or after July 1, 2001:			
	1. was the lessor a nonprofit corporation under chapter 317A or a cooperative under chapter 308A; <u>and</u>			
	2. was the lease cost reasonable under Minn. Stat. § 124D.11, subd. 4(1)?			
	B. If the charter school entered into as lessee a lease with a related party on or after July 1, 2001, does the lease contain the statement, “This lease is subject to Minnesota Statutes, section 124D.10, subdivision 23a?”			

Part XII. Audit Conclusion
The auditor must state a conclusion--based on this questionnaire and any other audit procedures performed--whether the client has complied with the legal provisions reviewed relating to charter schools.
Conclusion:

