

WHITE PINE CHARTER SCHOOL
2019 Board Elections

(Confidential Review and Legal Opinion Subject to Attorney/Client Privilege)

The undersigned was engaged to conduct a review of the 2019 election of board members for White Pine Charter School and to provide a legal opinion regarding the compliance of election procedures with applicable laws and entity organic documents and to provide recommendations relating to the election procedures.

Legal Status and Board Election Rules.

White Pine Charter School, Inc., (“WPCS”) is a public charter school organized and managed under the Idaho Non Profit Corporation Act. The board of directors of WPCS are deemed public agents authorized by an Authorizing Chartering Entity (“ACE”), in accordance with Idaho Code, Section 33-5204.

The board of directors of WPCS currently consist of seven members. The by-laws of WPCS currently permit the board to consist of no less than five nor no more than nine members. The board currently includes: Tony Lima, Chair; Joanna Stark, Vice Chair; Jim Seamans, Secretary; Adam Frugoli, Treasurer; Jonie Larsen, Director; Jacob Miller; Director; and, Ethan Huffman, Director. The directors serve for two year terms and are elected on a staggered basis. For the 2019 election the board positions held by Tony Lima, Jim Seamans and Jacob Miller were scheduled for election for new terms commencing at the annual meeting presently scheduled in July.

The organic documents of WPCS provide that at least one director shall not have children attending WPCS and at least two directors shall be parents with children in attendance at WPCS. WPCS is a legally and operationally independent entity established under the Idaho Non-profit Corporation Act and is operated in accordance with the terms and provisions of its adopted Articles of Incorporation, Bylaws and Board Policies.

As a public charter school WPCS is deemed to be a governmental entity for particular purposes such as being considered as an employer under the PERSI government retirement program pursuant to Idaho Code, Section 59-1302(15). In addition, its board of directors are subject to various criminal and civil requirements which relate to other governmental entities, including:

- a. Idaho Code, Sections 18-1351 through 1362 involving bribery and corrupt influences;
- b. Idaho Code, Chapter 5, Title 74 Prohibition Against Contracts With Officers;
- c. Idaho Code, Chapter 4, Title 74 Ethics in Government;
- d. Idaho Code, Chapter 2, Title 74 Open Public Meetings; and
- e. Idaho Code, Chapter 1, Title 74 Disclosure of Public Records.

As a public charter school WPCS is governed by the foregoing provisions in the same manner that a traditional public school and the board of trustees of a school district are subject to those provisions. However, there is not a specific provision in Idaho law which imposes operational mandates relating to board governance, elections and board succession except those contained in the Idaho Non Profit Corporation Act (“Act”), the Articles of Incorporation, Bylaws and Board Policies of WCPS.

The Act, particularly, Idaho Code Section 30-30-202(1)(f) authorizes a nonprofit corporation to organize with or without members. WCPS Bylaw, Article 3, Section 3.1 states:

“The Corporation shall have no members. Any action, which would otherwise by law require approval by a majority of all members or approval by the members, shall require only approval of the Board. All rights, which would otherwise by law vest in the members, shall vest in the Board”.

WCPS Bylaw, Article 4, Section 1, directs that the board shall consist of directors elected or appointed for two year terms. The number of directors was amended on June 2, 2005 to permit the number of directors constituting the board at not less than (3) not more than (9) directors. That section was again amended on May 17, 2016 to provide that the board may consist of not less than five (5) or more than (9) members. Section 4.3 was amended to provide that after the initial year of operation, directors will be elected to fill vacancies on the board by vote of “stakeholders” of the Corporation prior to the Corporation’s annual meeting.

The term “Stakeholders” is defined in the original Bylaw, Article 4, Section 4.3 (d), to include:

“As used herein, “Stakeholder” shall mean the parents and guardians of pupils then attending White Pine Charter School, faculty and employees of White Pine Charter School, member of the White Pine Charter School Parent-Faculty Association and such other persons and entities as the Board determines to be stakeholder of the Corporation.”

A current list of “Stakeholders” is not routinely maintained by the board, the administration or the Parent-Faculty Association for use in the election process. The term “Stakeholder” is not defined by the Act; however, Idaho Code, Section 30-30-412 permits a non-profit corporation to provide in its articles or bylaws for “delegates” to have some or all of the authority of members, including carrying on corporate activities during or between meetings. Idaho Code, Section 30-30-103 (7) defines “delegates” to mean those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.

Bylaw, Article 4 regarding election of directors, as amended, provides:

“Section 4.3 Election of Directors paragraph d first sentenced amended to read as follows:

d. After the initial year of operation, Directors will be elected to fill vacancies on the Board

by vote of stakeholders of the Corporation prior to the Corporation's annual meeting.

Bylaw, Article 5, Section 5.2 initially provided that election of directors will be held each year on the third month of July at the annual meeting. However, that Section was amended on July 2, 2005 to state as follows:

Section 5.2 annual meeting amended to read as follows:

The annual meeting of the Directors of the Corporation for newly elected Directors and Officers to succeed those whose terms expire and for the transaction of other business may properly come before the meeting, shall be held each year on the second Thursday of July, if not a legal holiday, and if a legal holiday, then on the day following, at 7:30 o'clock PM. *If the annual meeting of the Directors be not held as herein prescribed, the election of Directors and Officers may be held at any meeting called thereafter, pursuant to these Bylaws. (Emphases added)*

On January 16, 2013 WPCS Policy Manual, Policy BBB was adopted and states that the Board of Directors "will consist of no less than five (5) and no more than seven (7) members. The Bylaws, as noted above, were changed on May 6, 2016 to call for no less that five (5) or no more than seven (7) members. The same Policy BBB contains the following language relating to elections:

"Elections

Board elections shall be held annually. The Parent Faculty Association shall conduct the elections according to established by-laws".

The bylaws of WPCS do not contain a similar provision as contained in Policy BBB which delegates the PFA as the responsible entity to conduct board elections. This could be relevant because the Idaho Nonprofit Corporation Act, Idaho Code, Section 30-30-604 (2) allows for such delegation to be specified in articles of incorporation or bylaws (but not in "board policy"), and states:

"If the corporation does not have members, all the directors, except the initial directors, shall be elected, appointed or designated *as provided in the articles or bylaws*. If no method of designation or appointment is *set forth in the articles or bylaws*, the directors, other than the initial directors, shall be elected by the board." (Emphasis added)

Similarly, and as mentioned above, the Idaho Nonprofit Corporation Act, Idaho Code, Section 30-30-412 permits the corporation to include a provision in its articles or bylaws to authorize "delegates" to act for the board in its various functions (presumably including the conduct of election of directors). The WPCS bylaws contain a provision stating that stakeholders shall vote to elect directors to the PFA. However, the WPCS articles and bylaws do not include a provision delegating the full election process and conduct of elections to the PFA. Rather, such a provision only appears in Board Policy BBB. This circumstance leaves open the complex, yet possible argument, that the delegation of authority to actually conduct a board election can only be lawfully made in the articles or bylaws, rather than by board policy.

I am informed that no other specific written instruction or board policy has been given by the Board of Directors or Administration to the PFA regarding the conduct of the election, except that the Governance Committee is to appoint the candidates for board positions (Amendment No. 4, Bylaws, Section 4.12 (b) (iv)). Otherwise, the custom has been for the Board Governance Committee to assist the PFA, as needed or requested, in the election process.

Key Events and Summary of 2019 Board Election.

In preparation of the following key events and summary of the WPCS 2019 board election I reviewed numerous documents, emails, and other writings and conducted various interviews with selected persons (including some board members, PFA chairperson, Governance Committee chairperson, concerned anonymous teacher, and others) who had or claimed knowledge regarding relevant matters. I have attached copies of certain communications to this memo for further reference by the board.

1. Board member Joanna Stark (“Joanna”) was appointed to serve as chair of the Board Governance Committee which also included Joni Larsen and Ethan Huffman with assistance from principal Jeremy Clarke.
2. At the February 26th meeting of the board of directors Joanna presented a summary and proposed schedule for the 2019 board election (Exhibit “A”).
3. The candidate selection process is a function delegated to the Governance Committee (“GC”). This process commenced the first week of March, during which time the GC advertised the open positions with Power School notices and website posting. Applications were accepted until April 1, 2019.
4. During the first week of April the GC met to review candidates and selected six (6) nominees after eliminating one applicant, Stan Warner, who later protested his elimination at the April 30, 2019 board meeting. The GC chairperson consulted with WPCS legal counsel to confirm the legal authority of the GC to make selection of nominees as is set out in the GC duties and responsibilities enumerated in the WPCS By-laws.
5. The PFA, in consultation with the GC, determined to permit on-line voting and selected Google Forms as a voting platform, primarily because it had previously been used for school surveys, information gathering and was familiar to stakeholders.
6. Candidate biographies were collected and together with election information were given to the WPCS administration to distribute via Power School generated emails and website postings. The PFA also posted election information and biographies on its website.
7. No list identifying stakeholders was provided to the GC or the PFA for use in connection with the election. The PFA therefore conducted the election without having in place any list of stakeholders that could be used to confirm the identity of a stakeholder during the election process

or to determine if a stakeholder voted more than one time.

8. Online voting opened on Tuesday, April 30th when the WPCS administration sent a link to the voting platform to the stakeholders at the email addresses listed in Power School. Online voting could be accessed 24 hours a day until it was closed on May 7, 2019 at 10:00 a.m.

9. Paper voting opened on Wednesday, May 1st, when the the PFA hosted a “meet and greet” opportunity for candidates and stakeholders and set up a voting table for paper ballot voting. Voting was allowed between 6:00 p.m until approximately 7:30 p.m. on that occasion. Paper voting was also scheduled on May 3, 2019 during the car pool hour (2:45 p.m. to 3:45 p.m.); however, voting was held open longer to accommodate teachers who had car pool duty. No log of stakeholders who voted was taken or maintained for paper ballot voting. The stakeholders were generally known to the vote takers and ballots were collected from people who were “familiar” to the vote takers.

10. When online voting was commenced no special procedure was in place to determine if an online vote was being cast by a stakeholder. The PFA assumed that only stakeholders would be aware of the link to the voting platform and therefore able to vote. Approximately half way through the election process the PFA determined that the online voting platform could not identify a specific voter as a stakeholder. Therefore, on May 2nd the PFA took a corrective action which required the voter to register an email in order to allow a vote to be made. However, the email addresses were not specifically linked to any particular stakeholder, thus creating the possibility of online voting by a person who was not a qualified stakeholder. In addition the PFA did not have a list of stakeholders by name or email address and therefore could not canvas the qualification of any particular voter as a stakeholder who voted online.

11. The GC notified the PFA that at least 2 online test votes had been cast to illustrate that non-stakeholders could access the voting platform and cast votes by registering an alternate or created email address that did not belong to a stakeholder.

12. Online voting ended May 7, 2019 at 10 o'clock a.m.

13. No list of names for paper voters was taken during the election. At the close of paper ballot voting a vote count was taken by the PFA president, Marisa Morgan, and her assistant Brittany Oplinger. Brittany made the 1st count. Marisa made a 2nd count to confirm the accuracy of the voting. This count was not disclosed to the GC until the online votes had been counted and reported. The online count remains available to the PFA by accessing the link with the PFA email. However, the individual stakeholders placing the online vote cannot be confirmed by name. The paper ballots were inadvertently soiled by a milk spill and have since been disposed of.

14. The paper vote tallies made by the PFA were:

Amber Beck	28
David Gerristen	8
Anthony Lima	9
Jacob Miller	10

Emma Lee Robinson 24
Jim Seamans 23

15. The electronic vote count, after the initial rejection of the blank and “test” votes, was:

Amber Beck 38
David Gerristen 13
Anthony Lima 12
Jacob Miller 26
Emma Lee Robinson 39
Jim Seamans 26

The PFA president reported to me that the PFA ultimately rejected all electronic balloting because the PFA could not verify that a vote made by email registration could be conclusively tracked to a stakeholder.

16. Following the conclusion of the election process several letters of concerns and a recommendation for an improved voting procedure were received by WPCS, as follows:

- a. Concerned Parent Letter dated 5/28 (Exhibit “B”)
- b. Undated concerned teacher letter (Exhibit “C”)
- c. Attorney James R. Dalton letter dated May 27, 2019 (Exhibit “D”)
- d. Undated document, “WPCS-Board Election Resolution Plan (Exhibit “E”).

17. Information which came to the PFA and/or Board relating to possible electioneering, as defined in Idaho Code, Section 18-2318 or the possible inappropriate use public funds under the Idaho Public Integrity in Elections Act, Idaho Code, 74-604 was reviewed with potential witnesses during the process of this investigation. I found no conclusive evidence of the violation of either statute. I did find credible evidence that:

a. [REDACTED], stated: “I know who you should vote for—Emma Lee Robinson”, on April 30, 2019 in the teacher’s lounge near the front office. The witness could not confirm that such statement was made during the time when paper voting was taking place even though on-line voting was available. [REDACTED] did not recall making that statement on that occasion or participating in “electioneering”. [REDACTED] did recall [REDACTED]’s vocal support and recommendation of Emma Lee Robinson during a lunch hour but does not recall whether or not it occurred on an election day.

b. [REDACTED], made advocacy statements in the front office supporting the election of Emma Lee Robinson in the presence of other teachers, administrators and patrons. The witness could not confirm that such statements were made during the time or on the day when paper voting was taking place.

c. GC chair Joanna Stark acknowledged making a verbal response, on school premises, to an inquiry regarding Emma Lee Robinson to the effect that she was a qualified candidate. A specific

date of this comment could not be identified. However, Joanna stated that this was a similar generic response that she periodically made regarding any of the candidates. The mentioned statement could not be specifically identified as having been made while paper voting was taking place and was consistent with Joanna's responsibility to vet the various applicants as qualified for nomination.

Conclusions and Recommendations.

1. Electioneering. As mentioned above, I found no conclusive evidence that unlawful electioneering occurred. Although candidacy advocacy statements have been attributed to WPCS administrators such statements could not be verified to have taken place on the day of on premises balloting. In addition, the "Electioneering Statute", Idaho Code, Section 18-2318 is a criminal statute that carries a potential remedy of arrest and a fine for the alleged offender. This statute does not contain a provision which invalidates an election when "electioneering" takes place. Also, it is my opinion that an election for board membership on a non-profit corporation which operates a public charter school is not a "special election" election within the meaning of the Public Integrity in Elections Act. Rather, such elections are governed by the Idaho Nonprofit Corporation Act which provides that director elections are governed by the articles or bylaws of the entity. A complete restriction on candidate advocacy might impinge on the right free expression.

2. Election Compliance.

A. Stakeholder's Authority to Vote. It is my opinion that the WPCS bylaws lawfully delegate board selection to "stakeholders" pursuant to the provisions of Idaho Code, Section 30-30-412, which authorizes the board to delegate portions of its authority otherwise reserved to the board.

B. Stakeholder Identification. It is my opinion that the WPCS election procedure is flawed by not creating a list of stakeholders that are entitled to vote and can be used by the PFA or others, to verify that voters are qualified stakeholders or that any such stakeholder has only voted one time. In particular, it is not presently possible for the vote taker to conclusively identify either an on-line or paper ballot voter as a "parent or guardian". For example, might a step parent who has neither adopted or become a legally appointed guardian, yet resides in the home of a pupil and may actively participate at the school, be inadvertently considered a "stakeholder" only because he or she is "familiar" to the vote taker. Nor is it possible to know if an online voter is an actual stakeholder or only a person who has registered an email with the online voting platform. Nor is it possible for the vote taker to determine if the stakeholder has previously voted online or in person, except in the case of personal visual identification by the vote taker.

C. Stakeholder Voting Disqualification. The bylaws delegate board election authority to "Stakeholders". Board Policy BBB, rather than a bylaw provision, delegates the conduct of board elections to the PFA. It is not apparent that the PFA has legal authority to disqualify an online vote cast by an otherwise qualified stakeholder, at least without providing notice and an opportunity for such stakeholder to cast a vote by an alternate method as permitted in the bylaws.

3. Potential Legal Issues and Possible Corrective Actions. Some potential legal difficulty resulting from the election process and possible corrective actions might include:

1. If the board accepts the currently reported election results to reorganize the board at the upcoming annual meeting it may be difficult to obtain a legal opinion from WPCS counsel to satisfy the organizational assurance representations required by outside auditors, lenders or grant makers. To minimize that issue I recommend the affected parties reach an agreement to accept the election results and have the incumbent and incoming board affirm the new board membership and waiving any entitlement to protest the election. Such an agreement could be mediated and might include considerations such as expanding the number of board members or placing key persons affected by the recent election on committees or other positions that advance the shared interest of WPCS.

2. In the absence of the agreement contemplated in item 1, above, the board of directors might vote to revise or suspend the Policy BBB delegation board elections to the PFA based upon flaws in the process that may have inappropriately invalidated qualified stakeholder's votes. A new election would then be held which complies with the requirement of the current bylaws that "stakeholders" are authorized and entitled to elect directors. This procedure may not resolve the risk that a stakeholder, the PFA or an affected candidate might be alienated and pursue a challenge to the board's authority to reorganize or take such an action. However, board policy is typically considered to be the unique province of the board which may be suspended if required to act fairly or take an action in compliance with conflicting requirements of law or the organic documents of the entity.

3. The board of directors might vote to defer the annual meeting until new election procedures are established and a new election is held which insures that qualified stakeholders, and only qualified stakeholders, are allowed to vote. Such an action may satisfy the requirements of Bylaw Section 4.3 (d) and 5.2 which require the election of directors prior to the annual meeting or at any meeting held thereafter if not concluded prior to the annual meeting.

I recognize this memo contains a number of factual and legal complexities and express my willingness to meet with board to explain or answer questions. However, I caution the board that the investigative review and this resultant memo was prepared as an attorney/client privileged communication. If its contents are shared beyond the members of the board, as my client, such privilege might be deemed waived.

Respectfully,



Douglas R. Nelson

EXHIBIT

A

1. Open the candidate selection process the first of March. During this time we will advertise open positions and accept resumes. Accept applications through the month of March, with a deadline on April 1st.

The White Pine Charter School Board Governance Committee is seeking candidates for WPCS Board Membership.

Interested candidates may consist of individuals who have children currently attending WPCS or members of the community who wish to serve on the Board.

The committee will accept resume's with accompanying letters of intent now through April 1, 2019. Please send application information to: starkjo@wpcscougars.org

2. First week of April, committee get together to review these applications and weed out any unfit candidates.
3. Advertise the final candidate selection through Facebook, our Website and email (April 8).
4. The PFA will open up online voting a week prior to our April meeting (April 23), scheduled to close after our board meeting (April 30). We will also allow the opportunity for people to vote in person at the school the day of our board meeting (April 30).

Board Member Terms

Tony term ends 2019

Jim term ends 2019

Jakob term ends 2019

Joanna term ends 2020

Adam term ends 2020

Joni term ends 2021

Ethan term ends 2021

We have 3 board members whose terms are ending: Tony, Jim and Jakob.

In the past we have not allowed the school administrator to vote. I have been searching and have not found this in our bylaws, charter or policies. Does anyone object to allowing our administrator to vote?

Here is what I need from each of you to make this process much smoother this year.

1. Each Board members to submit at least one candidate for the selection process.
2. A decision from board members who terms are expiring if they plan to run for re-election.

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3. A committee. I'm requesting that Joni and Ethan join me on this committee. Neither are up for re-election. Next year my position and Adam's will be up for election, so for continuity with this election process they make the most sense.

EXHIBIT
3

WPCS Board of Directors
Tue 5/28

To The Board of Directors:

I have enjoyed being a part of the WPCS community for many years. However, I am a little confused by the voting process for the board of directors. There seems to be a very limited window open for voting. There were several parents I know that would have liked to attend the board meeting to meet and listen to all candidates, but could not because of other obligations. Maybe it would be helpful to livestream or have videos posted on the WPCS website? Perhaps in the future ballots could be sent out to all parents, then counted by signatures collected by an outside source.

Most concerning about elections this year, is concerns many parents have about certain behaviors surrounding this most recent election. The first of which, is board members soliciting votes for friends in staff areas and counting votes. Isn't this something usually done by the PFA? Another concern is a huge board turn over right at a crucial time in the high school development. Do new members have competencies to lead our schools through this next very difficult phase of growth?

I would ask that the board please revisit the voting policies and procedures. Please make sure we are making ethical and legal decisions within the boundaries of our charter. The future of our children and students are riding on your decisions.

Thank you for your consideration,

A Concerned Cougar Parent

EXHIBIT

To whom it may concern,

School board members were in the school around April 29th-May 3rd. During this time, an administrator and a school board member, [REDACTED] and Joanna Stark, were suggesting teachers should vote for EmmaLee Robinson. Some teachers were asking them who they should vote for and it was suggested that they should vote for EmmaLee Robinson. Teachers were worried because there was not adequate time given beforehand to learn about each candidate. Some teachers questioned why Amber Beck would return when she left her school board position before. It was suggested that Joana Stark had called her to come back and run again. There were around 6-7 teachers and staff members present in the office and lounge at this time. This was right after school.

The voting process was not secure or reasonable. No one was keeping track of who was voting at either voting times. I feel as if the voting times were not long enough or at convenient times for everyone to vote. Teachers work during carpool and are contracted until 4 pm. In the email sent by the school, the voting time outside was from 3:00-3:40 pm. School does not get out until 3:15 pm. Carpool lasts until about 3:30 pm, leaving only ten minutes to vote. Checking off names to verify teachers, staff members, and parents only voted once did not happen. Many people do not attend school board meetings. With the average attendance from outside guests being in the single digits, this is not an appropriate vote.

The email with information sent on candidates with the online ballot was sent out the day off April 30th at 4:33 pm, hours before the school board meeting.

The election process should be made fair and confidential for everyone. It is concerning that school board members and administration are suggesting who to vote for. There should not be outside influence on school grounds. Bringing this information forward is difficult from a teacher's standpoint because of potential repercussions. I'm afraid for my job, as this is why I'm remaining anonymous.

Sincerely,

A concerned teacher

JAMES R. DALTON

Attorney at Law

1240 S. 35th W.

Idaho Falls, ID 83402

Email: Jim.Dalton@daltonidaho.com

Phone: (208) 970-1523

Admitted in Idaho and Texas

EXHIBIT
D

May 27, 2019

Mr. Tony Lima
4609 W 65th S
Idaho Falls, ID 83402

Dear Tony:

I write to express a few concerns about how the recent White Pine Charter School Board elections may have been conducted. If it is true that employees of White Pine or individuals who were charged with overseeing the Board's election were telling parents/staff to vote certain ways, soliciting votes for or against any candidates, or distributing or posting campaign materials, and doing so within White Pine's facilities where the elections were being held, the Board should have serious concerns.

As a general matter of principle, any election, particularly one for a public entity, should be conducted in a fair and impartial manner. The integrity of an electoral process is fundamental to governance and necessary for the electors to trust in the outcome (favorable or unfavorable). For example, it is fundamental to a fair election that only qualified electors cast votes, that every vote is counted and that electors only vote once, and ensuring the electors will be free from undue or improper influence when they go to the polls. This is particularly important where a public school board exercises power over public funds.

For these reasons, Idaho Code § 18-2318 makes it a crime in Idaho to engage in electioneering "within a polling place, or any building in which an election is being held, or within one hundred (100) feet thereof" (emphasis added). That provision reads:

18-2318. ELECTIONEERING AT POLLS. (1) On the day of any primary, general or special election, no person may, within a polling place, or any building in which an election is being held, or within one hundred (100) feet thereof:

- (a) Do any electioneering;
- (b) Circulate cards or handbills of any kind;
- (c) Solicit signatures to any kind of petition; or

- (d) Engage in any practice which interferes with the freedom of voters to exercise their franchise or disrupts the administration of the polling place.
- (2) No person may obstruct the doors or entries to a building in which a polling place is located or prevent free access to and from any polling place.
- (3) Any election officer, sheriff, constable or other peace officer is hereby authorized, and it is hereby made the duty of such officer, to arrest any person violating the provisions of subsections (1) and (2) of this section, and such offender shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor exceeding one thousand dollars (\$1,000).

Idaho Code § 18-2318 (emphasis added).

Similarly, the Idaho Public Integrity in Elections Act prohibits the use of public funds and public property or resources to advocate for or against a candidate or a ballot measure:

74-604. PUBLIC FUNDS PROHIBITED. (1) Unless specifically required by law, and except as provided in this chapter, neither a public entity nor its employees shall make, nor shall a public official make or authorize, an expenditure from public funds to advocate for or against a candidate or a ballot measure.

(2) Neither a public entity nor any of its employees shall use, nor shall a public official authorize or use, public property or resources to advocate for or against a candidate or a ballot measure.

Idaho Code § 74-604.

Trustee elections for a traditional school district are considered “special elections” and clearly fall within the reach of these statutes, but Idaho Code is silent as to whether Charter Board elections are subject to the same criminal provisions and statutory prohibitions. Clearly, the Public Integrity in Elections Act applies to Charter Schools as “public entities,” including the prohibition against using public funds, property, or resources to advocate for or against a candidate or ballot measure in a primary, general election, or special election.

However, because Charter Schools are “organized and managed under the Idaho nonprofit corporation act,” Idaho Code § 33-5204, it may be less likely that the election of directors of a public charter school board would be considered a “special election.” Rather, the Idaho Nonprofit Corporation Act provides that directors are to be elected “at each annual meeting unless the articles or bylaws provide some other time or method of election.” Idaho Code § 30-30-604. White Pine’s bylaws appear to provide for election by the members of its Parent Faculty Association, which are its parents and faculty. The Bylaws appear to be silent on any expectation of impartiality or prohibition against

electioneering by those conducting the White Pine board elections, although these principles should be a fundamental assumption.

The White Pine Board should recognize that it's directors are "deemed [to be] public agents authorized by . . . the public charter school commission . . . to control [a] public charter school." Id. Charter Schools and their Boards are "governmental entities", see Idaho Code § 33-5204 (2), and are subject to the provisions of Idaho Code prohibiting bribery and corrupt influence, prohibitions against contracts with officers, ethics in government, open public meetings, disclosure of public records, etc. See id.

Even if Charter elections are not explicitly subject to the general prohibitions against electioneering, as a public entity, the White Pine Board should consider and be guided by the ethical standards governing other public elections, and should as a matter of policy and practice endeavor to ensure the integrity of its own election process.

At a minimum, White Pine should make sure:

- (1) That only qualified electors are casting votes and that each elector only votes once;
- (2) That the building within which the polling site is located is free from campaign materials (e.g., posters, flyers, hand bills, etc.);
- (3) That any electronic or digital voting process is sufficiently secure and not susceptible to fraud or abuse;
- (4) That Public Charter School employees and officials (including board members) are not using school funds, resources, or property to advocate for or against any candidate;
- (5) That Public Charter School employees and officials are not engaged in electioneering, circulating of campaign materials, soliciting or discouraging votes, or otherwise interfering in board elections in the School Building (if that is the location of the polling site) and not within 100 feet of the building;
- (6) That the Board and/or Parent-Faculty Association representatives who are specifically charged with coordinating or conducting the election and/or who work at the polling site are expected and trained to behave in a fair and impartial manner, without any public perception of bias or influence over the outcome of the election. Specifically, those who are explicitly in charge of running the elections and/or counting the ballots should not be publicly campaigning for or against any candidate. Certainly employees and school officials can vote their conscience and outside of work hours and off campus, it may be appropriate for such an individual to privately express their opinion. However, as election officials, they should refrain from engaging in public discourse, actively campaigning, or engaging in electioneering of any kind. The Board should consider this expectation as a condition precedent of any appointment to be an election official.

Letter to Tony Lima

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I am very fond of White Pine Charter School and I absolutely respect the outcome of any fair and impartial election process. My primary concern arises from anecdotal information that the election may not have been conducted with impartiality. I recommend that the Board undertake an examination or review of the recent election to assure itself that the election was conducted fairly and with impartiality, and to take any corrective measures it deems appropriate.

Although I am concerned that the election resulted in the loss of key expertise and leadership concerning the putative White Pine STEM Academy, I want to congratulate the new Board members on their election. While the new Board may be willing and able to take on the tremendous task before you, I hope you won't underestimate the work ahead and the need for committed leadership from the Board.

Best wishes.

Sincerely,

A handwritten signature in dark ink, appearing to read "James R. Dalton". The signature is stylized with a large initial "J" and a long horizontal stroke at the end.

James R. Dalton

White Pine Charter School Board Election Resolution Plan

Board Votes:

- 1. Invalidate election results**
 - Concerns over online system
 - Concerns raised by public/parents
 - Concerns raised by advisory board
 - Should be broad board concern that if we don't fix systems now, someone will do it for us (i.e. – Idaho Charter School Commission, Department of Education, Attorney Generals Office)

- 2. Add two additional board members**
 - Board member-elect(s) not at fault
 - We are now a two-school organization with a lot at stake including a new Bluum grant.
 - Workload placed on the seven current members and the administration is untenable

- 3. Nominate and approve Amber Beck and Emily Robinson to new, three year terms**

- 4. Appoint independent arbiter to audit our election process and make recommendations for improvement.**
 - We need answers and facts as to what happened with our election process so we can fix it for the future.
 - Results should come from a credible, independent body free of bias or malice. (i.e. – former county prosecutor, retired judge, retired general council).

- 5. Discuss and implement audit recommendations**
 - With audit recommendations in hand, we update our bylaws and processes.

- 6. Hold new election before end of 2019**
 - Under revised guidelines, we hold a new election before end of 2019 calendar year and move forward with our critical and important efforts.

- 7. At conclusion of new election, we'll vote as a board on who should be the chair.**

Supplemental Report email
6/26/2019

Douglas Nelson

From: Douglas Nelson
Sent: Wednesday, June 26, 2019 4:58 PM
To: limato@wpcscougars.org; frugoliad@wpcscougars.org; seamansji@wpcscougars.org; millerja@wpcscougars.org; larsenjo@wpcscougars.org; huffmanet@wpcscougars.org
Subject: Supplement to Confidential Election Report--ATTORNEY CLIENT PRIVILEGED and CONFIDENTIAL COMMUNICATION

Good Afternoon Board Members:

Following the submission of the 2019 Board Elections report I have been in contact with additional witnesses who were not available or were not known to me at the time of the initial report. I have now had contact with several, most of whom have been identified as persons who were present at the school on the day that on-line and in person voting took place. All of the additional witnesses are employees of the school.

A summary of information obtained from these interviews include:

1. Strong statements of advocacy for candidates Emma Lee Robinson and Amber Beck were made during the day of the initial "meet and greet" and the opening of online and paper ballot voting. These statements were made primarily by [REDACTED] and board member-governance committee chair, Joanna Stark. In particular, three of the witness have attested that Joanna's statements appeared clearly intended to solicit votes for Emma Lee Robinson and/or Amber Beck. The statements of Joanna were not received by the witnesses as simple confirmation of the qualifications of a particular candidate.
2. No witness observed any posters, fliers, or handouts that may have been generated by the school or others which advocated any candidate.
3. No evidence of expenditure of fund by WPCS advocating any particular candidate has been presented. WPCS communications appear to have been limited to candidate biographies and general election information.
4. One witness, [REDACTED], recalls strong advocacy statements supporting candidate Emma Lee Robinson made by [REDACTED] and Joanna Stark at the school on the day of the "carpool election". She recalls [REDACTED] stating, "you should vote for Emma Lee Robinson" and Joanna Stark stating, "Yes, I think she would be the best candidate and is well qualified". [REDACTED] also stated that she has been present when numerous employees and other stakeholders have expressed what she considers to be a "well established belief", that [REDACTED], Joanna Stark, and [REDACTED] strongly advocated for Emma Lee Robinson and Amber Beck during the process of the election. She also stated her belief that she did not receive timely or adequate instruction regarding voting opportunities. She stated that she cast her vote online, but after voting, the computer displayed a message directing her to submit another response. She believed her initial vote had not been recorded so she clicked on the tab and it brought her back to the voting page. She placed a second vote and the message occurred a second time which caused her to believe that she had inadvertently voted twice. She suspended additional voting attempts. She stated that she does not believe the voting tallies could possibly reflect a true and accurate vote by stakeholders and that her conversations with others suggest that the same opinion is broadly held by many persons connected with WPCS.
5. The person previously identified to the board as "anonymous teacher" was questioned a second time because I received information that she may have not been fully forthcoming in my initial interview. This person stated that her reluctance to be identified came from a concern that her employment could be jeopardized if she was perceived to be "contentious". This fear came from her perceived threat that the administration, in particular [REDACTED] previously instructed her not to speak to the board about school matters and [REDACTED] performance and to otherwise "watch her back". However, she also stated that she did not fear for her job if she voted in a

particular manner or advocated for someone other than the candidates preferred by the administration or Joanna Stark.

Respectfully submitted,

Doug Nelson

Douglas R. Nelson

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