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**Avoiding Personnel Landmines:
Tips for Surviving the
Employment Relationship**

Presented by:
James E. Young, Esq.
jyoung@mycharterlaw.com
Chastin H. Pierman, Esq.
cpierman@mycharterlaw.com

THE CHARTER LAW FIRM

Overview

- Introduction
- Goals
 - Ounce of Prevention
 - Improve Issue Spotting Skills
 - Provide Ideas for Systematic Change
 - Limit Disruption/Liabilities
- Disclaimers
 - Real Problems are Fact-Specific and Complex
 - Cookie-Cutting can be Dangerous
 - Non-Attorney Advice and the Attorney-Client Privilege
- Keep Your Questions Hypothetical

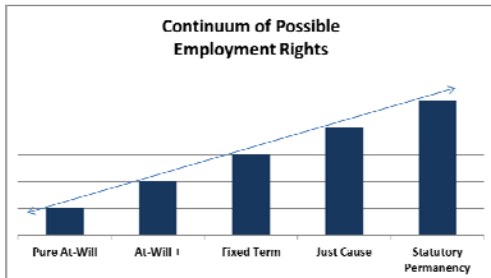
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I. Legal Basics

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Basic Forms of Charter School Employment



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Use of Employment Contracts



- For At-Will, Why Bother?
- Common Provisions [See Sample Contract]
- Inclusion Of Job Descriptions
- Consistency With Foundational Documents (i.e. Collective Bargaining Agreement, Charter, etc.)



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Hiring Issues



- "Exceptions" To At-Will Employment
- ADA Accommodations/Requirements
- Applications/Interviews [See Handouts]
- Criminal Background Checks
- Reference Checks



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II. Managing Employees

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Preliminary Questions

- Why do so many managers fail to evaluate?
- Are performance evaluations valuable?
- What are the most common legal traps?

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Elements of Effective Evaluations

- Ensure a system is in place for all
- Meet early and properly set goals
- Review policy/contract/collective bargaining agreement requirements
- Make employee aware of job requirements and evaluation form
- Use examples/be specific if documenting unsatisfactory performance

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A Word on FRISK Documentation System



FRISK Elements

- Facts
- Rule
- Impact
- Suggestions/Directives
- Knowledge



Remember: Always meet with employee prior to finalizing disciplinary document!



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Tips for Effective Investigations



- Review complaint policies/legal requirements
- Golden Rule: Investigate immediately, objectively, thoroughly; take appropriate remedial action
- Should investigate all complaints
- Start with plan and adjust as needed
- Understand special rules when possible crimes at issue
- Don't over-promise confidentiality
- Make written report with findings
- Notify parties of disposition



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III. Considering Separation




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Release of At-Will Employees

- Ensure Truly At-Will
- Consider Employment History and Documentation
- Resist Use Of "Excuses"
- When To Mention "A Reason"
- Severance Considerations






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A Word On Board Involvement


- When To Involve The Board
- How To Agendize
- "Complaints Or Charges"
- Taking Final Action




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IV. Ending the Relationship and Beyond



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Termination of Employment



- Termination Letter
- Final Paycheck
- COBRA
- Unemployment Claims/Labor Commissioner Claims
- DFEH/EEOC
- Claims, Law Suits/Tendering To Your Insurance Carrier
- PERB UPC – Retaliation Claims



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Settlement Agreements/Releases




- The Value Of Releases
- Common Quid Pro Quo
- Job References
- Legal Review




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YOUNG, MINNEY & CORR, LLP
916.646.1400 • INFO@MYCHARTERLAW.COM • WWW.MYCHARTERLAW.COM



QUESTIONS AND RESPONSES

THANKS FOR ATTENDING TODAY

SACRAMENTO OFFICE:
455 UNIVERSITY AVENUE
SUITE 150
SACRAMENTO, CA 95825

LOS ANGELES OFFICE:
5200 LANKERSHIM BLVD.
SUITE 210
NORTH HOLLYWOOD, CA 91601

SAN DIEGO OFFICE:
591 CAMINO DE LA REINA
SUITE 810
SAN DIEGO, CA 92108

WALNUT CREEK OFFICE:
500 YONACIO VALLEY ROAD
SUITE 110
WALNUT CREEK, CA 94596

AT-WILL EMPLOYMENT AGREEMENT
Between
OSOGOOD CHARTER SCHOOL & [INSERT EMPLOYEE NAME]

THIS EMPLOYMENT AGREEMENT (“Agreement”) is entered into by and between the above named employee (“Employee”) and the Governing Board (“Board”) of Osogood Charter School (“OCS”), a California public charter school approved by the [FILL IN] School District (the “District”). The Board desires to hire employees who will assist OCS in achieving the goals and meeting the requirements of OCS’s charter. The parties recognize that OCS is not governed by the provisions of the California Education Code, except as expressly set forth in the Charter Schools Act of 1992. The Board desires to engage the services of the Employee for purposes of assisting OCS in implementing its purposes, policies, and procedures.

WHEREAS, OCS and Employee wish to enter into an employment relationship under the conditions set forth herein, the parties hereby agree as follows:

A. STATUTORY PROVISIONS RELATING TO CHARTER SCHOOL EMPLOYMENT

1. OCS has been established and operates pursuant to the Charter Schools Act of 1992, Education Code section 47600, *et seq.* OCS has been duly approved by the District, according to the laws of the State of California.
2. Pursuant to Education Code section 47604, OCS has elected to be formed and to operate as a non-profit public benefit corporation pursuant to the Non-Profit Public Benefit Corporation Law of California (Part 2, commencing with section 5110 *et seq.* of the Corporations Code). As such, OCS is considered a separate legal entity from the District, which granted the charter. The District shall not be liable for any debts and obligations of OCS, and the employee signing below expressly recognizes that he/she is being employed by OCS and not the District.
3. Pursuant to Education Code section 47610, OCS must comply with all of the provisions set forth in its charter, but is otherwise exempt from the laws governing school districts except as specified in Education Code section 47610.
4. OCS shall be deemed the exclusive public school employer of the employees at OCS for purposes of Government Code section 3540.1.

B. EMPLOYMENT TERMS AND CONDITIONS

1. **Duties**

Employee shall work in the position of [INSERT]. Employee will perform such duties as OCS may reasonably assign and Employee will abide by all OCS’s policies and procedures as adopted and amended from time to time. Employee further agrees to abide by OCS’s charter. A copy of the job description for the above position is attached hereto and incorporated by reference herein. These duties may be amended from time to time in the sole discretion of OCS.

2. **Work Schedule**

The work schedule for this position shall be [part-time OR full-time] consisting of [INSERT SCHEDULE]. Workdays for the Employee shall be consistent with the applicable calendar of workdays for this position. The current year schedule is attached hereto and incorporated by reference herein.

Employee will not render services in person or by electronic means, paid or otherwise, for any other person or entity during contracted work hours with OCS.

3. **Compensation**

Employee will receive a salary of \$[INSERT AMOUNT] paid [monthly, bi-weekly, weekly] from which the Board shall withhold all statutory and other authorized deductions.

4. **Employee Benefits**

Employee shall be entitled to participate in designated employee benefit programs and plans established by OCS (subject to program and eligibility requirements) for the benefit of its employees, which from time to time may be amended and modified by OCS in its sole discretion.

5. **Performance Evaluation**

Employee shall receive periodic performance reviews conducted by his/her supervisor. At a minimum, performance evaluations will be conducted annually, on or about the anniversary date of employment with OCS. The frequency of performance evaluations may vary depending upon length of service, job position, past performance, changes in job duties, or recurring performance problems. Failure to evaluate Employee shall not prevent OCS from disciplining or dismissing Employee at-will in accordance with this Agreement.

6. **Employee Rights**

Employment rights and benefits for employment at OCS shall only be as specified in this Employment Agreement, OCS's charter, the Charter Schools Act and OCS's Employee Handbook, which from time to time may be amended and modified by OCS. Employment rights and benefits may be affected by other applicable agreements or directives or advisories from the California Department of Education or the State Board of Education. During the term of this Agreement, Employee shall not acquire or accrue tenure, or any employment rights with OCS.

7. **Licensure**

Employee understands that employment is contingent upon verification and maintenance of any applicable licensure and/or credentials.



8. **Child Abuse and Neglect Reporting**

California Penal Code section 11166 requires any child care custodian who has knowledge of, or observes, a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately, or as soon as practically possible, by telephone and to prepare and send a written report thereof within thirty-six (36) hours of receiving the information concerning the incident. By executing this Agreement, the Employee acknowledges he or she is a child care custodian and is certifying that he or she has knowledge of California Penal Code section 11166 and will comply with its provisions.

9. **Fingerprinting/TB Clearance**

Fingerprint clearance for Employee will be acquired through submitting the Employee's fingerprints to the California Department of Justice. Employee will be required to assume the cost of all fees related to the fingerprinting process. Employee will be required to submit evidence from a licensed physician and/or licensed entity that he/she was found to be free from active tuberculosis. Both clearances need to be in place prior to the first day of service.

10. **Conflicts of Interest**

Employee understands that, while employed at the School, he or she will have access to confidential and proprietary information. Employee therefore shall not maintain employment or contracts for employment, or engage in any consultant or independent contractor relationship, with any other agency or school that will in any way conflict with his/her employment with OCS.

11. **Outside Professional Activities**

Upon obtaining prior written approval of the Executive Director, the Employee may undertake for consideration outside professional activities, including consulting, speaking, and writing. The outside activities shall not occur during regular work hours. OCS shall in no way be responsible for any expenses attendant to the performance of such outside activities.

C. **EMPLOYMENT AT-WILL**

OCS may terminate this Agreement and Employee's employment at any time with or without cause, with or without advance notice, at OCS's sole and unreviewable discretion. Either party may immediately terminate this Agreement and Employee's employment upon written notice to the other party.

Employee also may be demoted or disciplined and the terms of his or her employment may be altered at any time, with or without cause, at the discretion of OCS. No one other than the Board of OCS has the authority to alter this arrangement, to enter into an agreement for

employment for a specified period of time, or to make any agreement contrary to the term of this Agreement, and any such agreement must be in writing and must be signed by the Board of OCS and by the affected employee and must specifically state the intention to alter this “at-will” relationship.

In the event of charter revocation or non-renewal, all contractual obligations under this Agreement cease immediately upon the effective date of revocation or non-renewal.

D. GENERAL PROVISIONS

1. **Waiver of Breach**

The waiver by either party, or the failure of either party to claim a breach of any provision of this Agreement, will not operate or be construed as a waiver of any subsequent breach.

2. **Assignment**

The rights and obligations of the respective parties under the Agreement will inure to the benefit of and will be binding upon the heirs, legal representatives, successors and assigns of the parties hereto; provided, however, that this Agreement will not be assignable by either party without prior written consent of the other party.

3. **Governing Law**

This Agreement will be governed by, construed, and enforced in accordance with the laws of the State of California.

4. **Partial Invalidity**

If any provision of this Agreement is found to be invalid or unenforceable by any court, the remaining provisions hereof will remain in effect unless such partial invalidity or unenforceability would defeat an essential business purpose of the Agreement.

E. ACCEPTANCE OF EMPLOYMENT

By signing below, the Employee declares as follows:

1. I have read this Agreement and accept employment with OCS on the terms specified herein.
2. All information I have provided to OCS related to my employment is true and accurate.
3. A copy of the job description is attached hereto.

4. This is the entire agreement between OCS and me regarding the terms and conditions of my employment. This is a final and complete agreement and there are no other agreements, oral or written, express or implied, concerning the subject matter of this Agreement.

Employee Signature: _____ Date: _____

Address: _____

Telephone: _____

OCS Approval:

Dated: _____

[NAME], Executive Director, OCS

*This Employment Agreement is subject to ratification
and approval by the Governing Board of OCS.*



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Guide for Pre-Employment Inquiries

	Category	It is discriminatory to inquire about	Examples of acceptable inquiries
1	Name	<ul style="list-style-type: none"> a. The fact of a change of name or the origin of an applicant whose name has been legally changed. b. Maiden name. 	<ul style="list-style-type: none"> a. Information relative to change of name, use of an assumed name or nickname necessary to enable a check on applicant's work records.
2	Birthplace and Residence	<ul style="list-style-type: none"> a. Birthplace of applicant or spouse. b. Birthplace of applicant's parents. c. Requirement that the applicant submit birth certificate, naturalization or baptismal records (see citizenship item). 	<ul style="list-style-type: none"> a. Applicant's place of residence. b. Length of applicant's residence in city here the employer is located.
3	Creed and Religion	<ul style="list-style-type: none"> a. Applicant's religious affiliation. b. Church, parish or religious holidays observed by applicant, and whether religious beliefs prevent applicant from working on those days. 	<ul style="list-style-type: none"> a. None; however, an employer may state the regular work days, hours and shifts to be worked, as well as religious days on which operations are closed.
4	Race or Color	<ul style="list-style-type: none"> a. Applicant's race. b. Color of applicant's skin, eyes, hair, etc. 	<ul style="list-style-type: none"> a. None.
5	Photographs or Fingerprints	<ul style="list-style-type: none"> a. Photographs with application. b. Photographs after interview, but before hiring. 	<ul style="list-style-type: none"> a. Statement that photograph and/or fingerprints may be required after employment.
6	Age	<ul style="list-style-type: none"> a. Date of birth or age of an applicant except when such information is needed for or to: <ul style="list-style-type: none"> 1. Maintain apprenticeship requirements based upon a reasonable minimum age. 2. Satisfy the provision of either state or federal minimum age statutes. 3. Avoid interference with the operation of the terms and conditions and administration of any bonafide retirement pension employee benefit program. 4. Verify that applicant is above the minimum legal age but without asking for a birth certificate. b. Age specifications or limitations in newspaper advertisements which might bar workers under or over a certain age. c. Dates of attendance or completion of elementary or high school. 	<ul style="list-style-type: none"> a. Statement that applicant's hire is subject to verification that he/she meets legal age requirements. b. If hired, can you furnish proof of age? c. Are you over 18 years of age? d. If under 18, can you submit a work permit after employment?
7	Education	<ul style="list-style-type: none"> a. Specific years of attendance or graduation. b. Who paid for educational expenses while in school. c. Whether applicant still owes on loans taken out while in school. 	<ul style="list-style-type: none"> a. Academic, vocational or professional education and the public and private schools attended.
8	Citizenship	<ul style="list-style-type: none"> a. Any inquiry into whether applicant is or intends to become a citizen of the United States. b. Any requirement that applicants produce naturalization or alien registration prior to employment. c. Requirement of production of naturalization or alien registration prior to employment. 	<ul style="list-style-type: none"> a. Can you, after employment, submit verification of your legal right to work in the United States?
9	National Origin and Ancestry	<ul style="list-style-type: none"> a. Applicant's lineage, ancestry, national origin, descent, parentage or nationality. b. Language commonly used by applicant. c. How applicant acquired the ability to read, write or speak a foreign language. 	<ul style="list-style-type: none"> a. What language the applicant speaks, writes, reads or understands (may be asked only if language other than English is relevant to the job being applied for).



10	Language	<ul style="list-style-type: none"> a. Applicant's mother tongue. b. Language commonly used by applicant at applicant's home. c. How the applicant acquired ability to read, write or speak a foreign language. 	<ul style="list-style-type: none"> a. Languages applicant speaks and/or writes fluently.
11	Relatives	<ul style="list-style-type: none"> a. Name and/or address of any relative of applicant. 	<ul style="list-style-type: none"> a. Names of relatives already employed by the company or by a competitor.
12	Military Experience	<ul style="list-style-type: none"> a. Applicant's military experience in other than U.S. Armed Forces. b. National Guard or Reserve Units of applicant. c. Draft classification or other eligibility for military service. d. Dates and conditions of discharge. 	<ul style="list-style-type: none"> a. Military experience of applicant in the U.S. Armed Forces, including any relevant skills required. b. Whether separation from military service was for any reason other than an honorable discharge. c. Whether applicant has received any notice to report for duty in the Armed Forces.
13	Organization(s)	<ul style="list-style-type: none"> a. Clubs, societies, lodges or organizations to which the applicant belongs, which might indicate race, religion, etc. b. Names of any service organization of which applicant is a member. 	<ul style="list-style-type: none"> a. Applicant's membership in any professional or trade organization, unless they indicate applicant's race, religion, ancestry, sex or age.
14	References	<ul style="list-style-type: none"> a. The name of the applicant's former employers or acquaintances that elicit information concerning applicant's race, sex, color, religion, national origin, physical handicap, marital status, age, sexual orientation or medical condition. 	<ul style="list-style-type: none"> a. Names of persons willing to provide professional and/or character references for applicant. b. Names of persons who suggested applicant apply for a position with the employer. c. Request of applicant for written consent to a former employer's giving of a narrative job reference.
15	Sex and Marital Status	<ul style="list-style-type: none"> a. Sex of applicant. b. Marital status of applicant. c. Dependents of applicant. d. Whether applicant has made provisions for child care. e. Whether applicant is pregnant, or uses birth control. f. With whom applicant resides. g. Whether applicant lives with his/her parents. h. Applicant's maiden name. i. Name of spouse or children. j. Child support obligations. 	<ul style="list-style-type: none"> a. The name and address of applicant's parent or guardian (for minors only, if applicable to the job). b. Name and position of any relative already employed by the company.
16	Arrest Record	<ul style="list-style-type: none"> a. The number and kinds of arrests of an applicant. b. Misdemeanor convictions for possession of marijuana that are more than two years old. 	<ul style="list-style-type: none"> a. Number and kinds of convictions for criminal offenses (must be accompanied by a statement that a conviction will not necessarily disqualify an applicant for employment).
17	Height or Weight	<ul style="list-style-type: none"> a. Any inquiry into height or weight of applicant, except where it is a bonafide occupational requirement. 	
18	Disability or Physical or Mental Condition	<ul style="list-style-type: none"> a. Inquiry into applicant's general medical condition, state of health or illness, physical or mental disabilities. 	<ul style="list-style-type: none"> a. Whether applicant is able to perform the essential functions of this job (if applicant voluntarily discloses a disability, can inquire whether applicant can perform the job notwithstanding the disability or with reasonable accommodation). b. Statement that employment offer may be made contingent to applicant passing a job-related physical exam.
19	Notice of Event of Emergency	<ul style="list-style-type: none"> a. Name and address of relative to be notified in case of accident or emergency. 	<ul style="list-style-type: none"> a. Name and address of person to be notified in case of accident or emergency.

Watch Your Language!

When placing and accepting job orders and advertisements, avoid specifications linked to:*

*The following are provided as examples of discriminatory and potentially discriminatory job specifications. The California Fair Employment and Housing Act bans employment discrimination on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, marital status, sex or age. Section 12940(d) states that it is an unlawful employment practice for any employer or employment agency, unless specifically acting in accordance with Federal Equal Employment Opportunity Guidelines or regulations approved by the Fair Employment and Housing Commission, to print or circulate any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, which expresses directly or indirectly, any limitation, specifications or discrimination on a basis enumerated in the Act.

Sex	Sex-tied Job Titles	Age	Ethnicity	Disability
One-girl office	Night watchman	Young, energetic person	No B's	Good physical shape
Two-man operation	Telephone girl	Recent grad	No accents	Work on your feet
FOA (Front Office Appearance)	Bindery man	Age 20 to 30	Japanese	Lean and mean
Girl . . . Lady . . . Woman	Counter boy	Very young company	Must be Italian	Slender appearance
Strong Guys	Girl Friday	Student	Chinese preferred	
Takes interest in her work	Office boy	College evening student	Honorable discharge	
Must wear coat and tie	Repairman	Age 40 to 50	U.S. citizen	
Pretty boy	Bicycle boy	Mature (30-55)	English must be mother tongue	
Top lady-like appearance	Hostess	Age 20's	Filipino that speaks Tagalog	
Will fit position to man	Salesgirl	35 preferred	Marital Status	
Shirt sleeves guy	Warehouseman	Boy	Single	
Bright, aggressive female	Busboy	Average age	Married	
Sharp, sweet girls	Cocktail waitress	Young and promotable	Unattached	
Want big ticket guy	Draftsman	Retired representative	Married and stable	
Executive secretary – no men	Grill girl	Maximum 2 – 5 years experience	No children	
Can-do man	Salesman	Junior position	Prefers single	
Man only	Waiter	Will train bright new graduate	Couple	
No pantsuits	Maintenance man	Right out of college (2 years) of service	Without family problems	
Sideburns not below earlobes	Policeman	Recent graduate, little or no experience	Family person	
Interested in seeing lots of gals	Fireman		Not married	
14-week training-wife can go, too			No children calling all the time	
A nice lady that knows up-to-date fashion				