



CLIENT NEWS BRIEF

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DISTRICTS MAY CONTRACT WITH PRIVATE NONPROFITS TO PROVIDE STUDENT DROPOUT PREVENTION AND RETENTION PROGRAMS

The California Attorney General recently affirmed that a school district may contract with a private nonprofit organization to provide at-risk student dropout prevention and retention programs, even though the Legislature has repealed the Education Code section expressly authorizing districts to enter such contracts. (____ Ops.Cal.Atty.Gen. ____ (2010, Op. No. 07-703).) There were two independent bases for the Attorney General's conclusion: first, in newly adopted statutes the Legislature expressed its intent to continue districts' authority in this area, and second, this right falls within districts' broad general authority to conduct their affairs and take actions that further educational purposes.

Before it was repealed, Education Code section 52900 provided that a school district could contract with a private nonprofit organization to establish Alternative Education and Work Centers. These programs emphasized the teaching of basic academic skills to help students obtain employment, return to school, and stay in school. In 2004, the Legislature passed Assembly Bill 825 ("AB 825"), which repealed statutes authorizing 22 programs, including the Alternative Education and Work Centers program, and consolidated their funding into six different block grants. The Alternative Education and Work Centers program was rolled into the newly created Pupil Retention Block Grant.

The Attorney General determined that AB 825 simultaneously repealed Education Code section 52900 while adding new Education Code sections that extended to districts the same authority that had been granted to them under section 52900. AB 825 added new Education Code section 41505, which authorizes a school district to spend Pupil Retention Block Grant funds for "any purpose authorized by the programs listed in Section 45106 as the statutes governing those programs read on January 1, 2004." Both former section 52900 and dropout prevention programs are listed in Education Code section 41506, and as of January 1, 2004, Education Code section 52900 expressly authorized a school district to contract with a private nonprofit organization to provide dropout prevention and recovery programs. Accordingly, the Attorney General concluded that school districts may use Pupil Retention Block Grant funds to contract with private nonprofits to provide Alternative Education and Work Centers.

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Furthermore, the Attorney General concluded that school districts generally possess authority to enter such contracts pursuant to the broad powers granted to them under the Education Code. Education Code section 35160 states that districts may act in any manner "which is not in conflict with the purposes for which school districts are established." Education Code section 35160.1 adds that section 35160 should be "liberally construed" to effect the Legislature's objective of giving districts "broad authority to carry on activities and programs, including the expenditure of funds for programs ... that are necessary or desirable in meeting their needs." The Attorney General opined that providing Alternative Education and Work Centers is clearly an action that is consistent with the purposes for which school districts are established.

As a caveat, the Attorney General added that the validity of any particular contract would depend on its particular factual circumstances. For example, a district's contract for the provision of dropout programs may not violate Education Code section 45103.1, which prescribes the conditions under which districts may enter contracts for personal services ordinarily performed by classified employees, or the district's collective bargaining agreement with its employees. Contracts for student dropout prevention and retention programs should be reviewed in the context of the particular district's bargaining agreements and history.

If you have questions regarding this opinion or for further information, please do not hesitate to contact one of our [seven offices](#) located statewide or consult our [website](#).

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