

CLIENT NEWS BRIEF

California Court of Appeal Upholds Injunctive Relief to Keep Charter School Open and Funded During Revocation Appeal Process

In a decision favorable to charter school proponents, a California court of appeal has upheld a preliminary injunction that kept three charter schools open and funded during the appeal of the revocation of their charter petitions. In a high profile dispute, Oakland Unified School District revoked the charters of American Indian Model Schools' (AIMS) three charter schools for fiscal mismanagement, improper use of public funds, and conflict of interest violations. Leading up to the revocations, AIMS had garnered significant media attention as a success story due to the high test scores of students whose neighborhood schools have traditionally underperformed. In *American Indian Model Schools v. Oakland Unified School District* (June 23, 2014) ___ Cal.App.4th ___ 2014 WL 2811562, AIMS appealed the revocation decision to the County Board of Education and, subsequently, to the State Board of Education. AIMS also sought a preliminary injunction to stop the revocation of its charters from being implemented during the appeal process. In its decision upholding the trial court's issuance of a preliminary injunction, the court of appeal interpreted several aspects of Education Code section 47607 involving the charter revocation process.

Under Education Code section 47607, the chartering authority must consider, as the most important factor in determining whether to revoke a charter, increases in pupil academic achievement for all groups of pupils served by the charter school. The court of appeal determined that this consideration must be supported by substantial evidence. The relevant statutory language regarding pupil academic achievement went into effect on January 1, 2013, only a few months before the AIMS charters were revoked in March 2013. Both the trial court and court of appeal found the record devoid of substantial evidence showing that the District considered pupil achievement. The court of appeal noted that "(t)he District must give extra weight and consideration to high test scores, but high test scores would not prevent revocation of a charter."

Unfortunately, the court stopped short of offering guidance as to what constitutes substantial evidence of a district's consideration of a charter school's academic achievement. Nonetheless, the clear import of this holding is that a chartering authority must clearly document its consideration of the academic achievement of all pupil groups as the most important factor in its charter revocation decision. It is also important to note that this holding may reach beyond the *revocation* of a charter. The pupil academic achievement for all groups of pupils served by the charter school also must be considered as the most important factor in determining whether to grant a charter *renewal*.

The court further found that section 47607 does not prohibit a trial court from granting an injunction that continues funding to a charter school during the appeal of a revocation. Section 47607 explicitly provides that for revocations based on certain criteria, the charter school must continue to qualify as a charter school for funding purposes and may otherwise continue to operate. The statute, however, does not have a similar provision for revocations based on a failure to meet generally accepted accounting principles, fiscal mismanagement, or a violation of any provision of law. Nonetheless, the court

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Edward J. Sklar
Partner and Charter Schools
Practice Group Co-Chair
Walnut Creek Office
esklar@lozanosmith.com



Mark P. Bookholder
Associate
Monterey Office
mbookholder@lozanosmith.com



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found that the absence of such language did not mean that funding can never be continued by a court order. The court believed that public policy favored this interpretation.

Lastly, the court held that a trial court could grant a preliminary injunction staying a charter revocation, even where the charter school is still appealing the revocation decision, if the charter school can show that it will be irreparably harmed if a preliminary injunction maintaining the status quo is not granted. In this case, the court found that AIMS met this exception by showing that, in the absence of an injunction, it would lose its funding, faculty, and student body and that the students “would be deprived of the opportunity to obtain an education at schools that have enabled them to obtain high API and SAT test scores.”

As a result of this decision, charter schools that face revocation (or possibly nonrenewal of their charter) may increasingly turn to the courts for injunctive relief. Further, school districts and county boards of education that are chartering authorities should document their analysis of the academic achievement of all pupil groups as the most important factor in their consideration of whether to revoke a charter.

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