



CLIENT NEWS BRIEF

November 2010

Number 53

RECENT DEVELOPMENTS IN CHARTER SCHOOL LAW

Two important developments in the law provide guidance for school districts grappling with charter school issues in 2011.

Charter School Students are Entitled to Free Speech and Expression Rights

Recently enacted Senate Bill ("SB") 438 clarifies that the same free speech and expression rights that regular public school students enjoy under the Education Code also apply to charter school students. Education Code section 47610 exempts charter schools from having to comply with much of the Education Code, and instead requires that charter schools abide by the terms of their own charter petitions and the Charter Schools Act. Because of Education Code section 47610, prior to SB 438 it may have been possible to argue that charter school students do not enjoy the same free speech protections as other public school students. SB 438 amends Education Code section 48907 to specify that charter schools must also give their students freedom of the press and expression in what students say, wear, and what they write in official school publications. Although students have free speech and expression rights, section 48907 also requires charter schools to adopt a written publication code that includes reasonable restrictions for conducting such activities. SB 438 also adds "charter schools" to Education Code section 48950, which protects journalism students, advisors and other school employees from disciplinary action resulting from free expression. SB 438 is effective January 1, 2011.

Court of Appeal Clarifies Limitations on School District Liability for Failure to Provide Facilities Under Prop. 39

Proposition 39 ("Prop. 39") requires a school district to provide reasonably equivalent facilities to a charter school requesting such facilities if the charter school has at least 80 units of in-district average daily attendance. Charter schools seeking facilities must have submitted requests to school districts by November 1. As school districts are responding to those requests, it is important to consider a recent case from the Second Appellate District addressing potential liability for costs where a school district fails to comply with Prop. 39 and a charter school finds alternative student housing.

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In New West Charter Middle School v. Los Angeles Unified School District (August 19, 2010) 187 Cal.App.4th 831, the Second Appellate District affirmed and modified the trial court's award of damages to New West Charter School ("New West") as a result of Los Angeles Unified School District ("LAUSD") violating Prop. 39 by withdrawing its offer of facilities to New West after New West had accepted LAUSD's Prop. 39 offer. LAUSD offered New West classrooms and certain shared facilities at Fairfax High School ("Fairfax"). New West accepted the offer; thereafter, LAUSD purported to withdraw the offer, and refused to allow New West to co-locate at Fairfax. New West obtained a trial court order requiring LAUSD to provide facilities at Fairfax, or other reasonably equivalent facilities. LAUSD offered alternative facilities that New West rejected as not reasonably equivalent. New West opted to locate in commercial facilities. The trial court determined LAUSD's alternative facilities to be wholly inadequate and awarded damages to New West in lieu of requiring the District to provide facilities because the school year had already begun.

While the case confirms that schools districts are potentially liable for damages for violating Prop. 39, the subsequent appellate court ruling also limited such liability in two important ways: 1) the value of facilities must be offset by both the pro-rata share and maintenance and operations costs; and 2) a charter school will not be awarded speculative damages for the intangible value of losses for certain features that differ between a charter school's desired school district facilities and a site ultimately leased by the charter school.

On appeal, the court of appeal affirmed the trial court's decision, but reasoned that the damages should be limited to the value of Fairfax less the costs of co-location at Fairfax, or \$187,356. The court rejected New West's argument that the costs of "co-locating" at the LAUSD site should only include the pro-rata share and not maintenance and operations costs. The court reasoned that regardless of whether LAUSD or New West was providing the maintenance and operations costs, New West would be responsible for such costs under Title 5 of the California Code of Regulations, section 11969.4. Therefore, maintenance and operations costs must be considered when determining the overall cost of co-location to determine potential damages. The difference between the value and the co-location costs represented the benefit of New West's bargain with LAUSD, had LAUSD performed under its initial Prop. 39 offer.

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If you have any questions new developments in charter school law or charter school issues generally, please do not hesitate to contact one of our [seven offices](#) located statewide or consult our [website](#).

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