

# CLIENT NEWS BRIEF

## California Court Rules that Charter Schools Generally Cannot Locate Outside of Their Authorizing School District's Boundaries

In a case watched closely by the charter school community — including school districts, county offices of education and charter operators — California's Third District Court of Appeal has issued an opinion which holds that the geographic and site limitations of the Charter Schools Act (Ed. Code, § 47600 et seq.) are applicable to *all* charter schools, including "nonclassroom-based" programs. (*Anderson Union High School District v. Shasta Secondary Home School* (Oct. 17, 2016) \_\_\_ Cal.App.4th \_\_\_.)

Represented by **Lozano Smith**, Anderson Union High School District (AUHSD) brought suit against Shasta Secondary Home School (SSHS) to stop the improper establishment of a charter facility within AHUSD's boundaries. SSHS was authorized by a neighboring school district and did not seek the consent of its authorizer or AHUSD before locating a "resource center" within AUHSD's boundaries.

At issue in this case are two statutes: Education Code section 47605, which requires a charter school generally to operate within the geographic boundaries of its authorizing school district; and Education Code section 47605.1, which provides a very limited exception for charter schools to locate certain satellite facilities to support independent study in adjacent counties. In reversing the trial court, the Court of Appeal thoughtfully evaluated the legislative history of the Charter Schools Act and multiple rules of statutory construction, concluding that the relevant statutes indeed say what they mean: *All* charter schools must comply with the Charter Schools Act, including its geographic restrictions for the operation of charter schools. As such, the plain language of the Charter Schools Act limits in-county resource centers located outside of the chartering district.

Behind this technical legal issue is a cottage industry of charter schools operating nonclassroom-based programs, availing themselves of a perceived loophole in the Charter Schools Act that would allow them to locate at will, without the consent of their authorizer or the school district in which they are encroaching. The court's opinion dispels the notion that such a loophole exists. Importantly, nonclassroom-based programs are not limited to independent study or homeschooling, in the traditional sense. Rather, these programs often operate seat-based instruction up to four days per week and are funded at the same level as traditional public schools. Certain charter operators around the state have increasingly sought to utilize this nonclassroom-based model, and to receive authorization from one school district and then locate in a different school district. Flowing from this practice are a host of unintended consequences, including challenges for the authorizer providing oversight to the charter schools and elimination of local school district sovereignty over the educational programs provided in its community. The Court of Appeal's opinion is poised to end the abuses of charter schools utilizing this practice. The opinion benefits not only school districts in general, but also the vast majority of charter schools that operate in compliance with the Charter Schools Act and in cooperation with their authorizers and neighboring school districts.

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The *Anderson Union High School District* opinion has been certified for publication and now constitutes precedent on this issue, unless or until the California Supreme Court grants review of the case, which could impact the precedential value of the opinion. SSHS, which has been supported through amici curiae California Charter Schools Association and others at the Court of Appeal level, now has relatively short deadlines to seek reconsideration of the opinion by the Court of Appeal and to otherwise seek review from the California Supreme Court.

AHUSD was represented by Lozano Smith partner and Litigation Practice Group Co-Chair Sloan Simmons, partner and Charter School Practice Group member Megan Macy, and senior counsel Anne Collins, who is a member of both the firm's Charter School and Litigation practice groups. Lozano Smith Charter School Practice Group co-chairs and partners Edward Sklar and Devon Lincoln have regularly advised school districts on the exact issue resolved by the Court of Appeal in this case over the past several years.

For more information on the *Anderson Union High School District* opinion, the Charter Schools Act, and both administrative or litigation considerations related to both, please contact the authors of this Client News Brief or an attorney at one of our [10 offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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