

CLIENT NEWS BRIEF

California Bans For-Profit Charter Schools

Governor Jerry Brown has signed new legislation banning for-profit corporations, for-profit educational management organizations, and for-profit charter management organizations from operating charter schools in California. Assembly Bill (AB) 406 takes effect July 1, 2019.

Background

Amidst a growing nationwide movement to privatize public schools, for-profit corporations known as educational management organizations (EMOs) and charter management organizations (CMOs) are on the rise. These organizations make public education their business, establishing charter schools that are required to contract with the for-profit corporations for all or a majority of services, and taking a percentage of the taxpayer dollars that fund these schools as profit.

Until now, California law has expressly allowed public charter schools to be operated by non-profit corporations, but has stood silent on whether a charter school may be operated by a for-profit corporation. Absent any clear prohibition, according to the California Senate Education Committee, for-profit corporations now operate as many as 34 charter schools statewide, delivering public education to over 25,000 students.

AB 406, signed into law on September 7, amends the Education Code to provide a definitive prohibition where current law is silent. Under AB 406, a public charter school may not be operated as, or by, a for-profit corporation, including an EMO or CMO. For the purposes of AB 406, the Legislature assigned a broad definition to the term "operate," and a for-profit corporation may not do any of the following in relation to a charter school:

- Nominate, appoint, or remove charter school board members or officers;
- Employ, supervise, or dismiss charter school employees;
- Manage a charter school's day-to-day operations as its administrative manager;
- Independently approve, deny, or manage the budget or expenditures of a charter school; or
- Provide services to a charter school before the school's governing body has properly approved a contract for such services.

Takeaways

After the law goes into effect, petitioners submitting new or renewal charter petitions may not propose to be operated by a for-profit corporation. A charter school also may not enter into a subcontract to avoid the requirements

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As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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of AB 406. In enacting this law, the Legislature is attempting to ensure public schools do not use taxpayer dollars to generate profits for corporations. It is not yet clear whether AB 406 will effectively encompass all possible organizational structures a for-profit corporation could adopt, and whether this bill will have its intended effect of eliminating for-profit corporate management of the day-to-day operations of California charter schools.

Charter school operators and authorizers should examine the organizational structure of charter schools within their purview to determine if current operations might be impacted upon renewal by AB 406. Although AB 406 is not immediately effective, local educational agencies reviewing either new or renewal charter petitions on or after July 1, 2019 should carefully review all elements of a petition, including those related to governance structure, operations, and board bylaws, to ensure the proposed new or renewal charter school meets all requirements under the law, and does not impermissibly assign operational oversight to a for-profit corporation. Charter authorizers may also need to consider the impacts of significant changes to the governance structure of a charter school's operation, and may wish to consult with their legal counsel.

For more information about AB 406 or about the Charter Schools Act in general, please contact the authors of this Client News Brief or an attorney at one of our [eight 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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