



CLIENT NEWS BRIEF

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NEW CHARTER REVOCATION REGULATIONS BECOME EFFECTIVE DECEMBER 16, 2011

The State Board of Education (SBE) recently approved implementing regulations for Education Code section 47607, effective December 16, 2011, setting forth a detailed process for school districts and county offices of education authorizing charter schools ("Authorities") to follow when revoking a charter. Additionally, the regulations set forth an expedited process when there is a severe and imminent threat to the health or safety of pupils and detail the appeal process for charter schools to challenge a revocation under all circumstances.

Education Code section 47607(c) permits Authorities to revoke a charter if the Authority finds, through a showing of substantial evidence, that the charter school: (1) committed a material violation of any of the conditions, standards or procedures set forth in the charter; (2) failed to meet or pursue any of the pupil outcomes identified in the charter; (3) failed to meet generally accepted accounting principles, or engage in fiscal mismanagement; or (4) violated any provision of law. However, the statute is vague regarding the revocation process, requiring the Authority to notify the charter school of any violation and give the school a reasonable opportunity to remedy the violation, but providing little other guidance.

The regulations, found at Title 5 of the California Code of Regulations sections 11960 *et seq.*, set forth a very detailed process for such notice and the opportunity to remedy. The highlights of that process include:

- (1) At least 72 hours prior to any board meeting in which an Authority will consider issuing a "Notice of Violation" of one or more specific alleged violations of Education Code section 47607(c), the Authority shall provide the charter school with notice and all relevant documents related to the proposed action.
- (2) After providing the initial 72 hours notice and review by the Authority's board, the Authority may issue a Notice of Violation along with a specific remedy period.
- (3) Should it choose to respond to the Notice of Violation, the charter school shall have until the end of the remedy period to provide evidence refuting the violation or describing any remedial or proposed remedial action.
- (4) At the end of the remedy period, if the Authority has substantial evidence that the charter school has failed to refute or remedy the violation, the Authority shall issue a Notice of Intent to Revoke and shall hold a public hearing concerning the revocation.
- (5) No more than 30 days after the public hearing, the Authority shall issue and provide to the SBE a Final Decision revoking or declining to revoke the charter. If the Authority does issue a Final Decision within the timeframe set forth in the regulations, the Notice of Intent to Revoke is void.

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Additionally, the regulations set forth a process for a charter school to appeal to the county board of education after revocation by a school district. (Cal. Code Regs., tit. 5, § 11968.5.4.) On appeal, the county board of education is tasked with determining whether the Authority's factual findings are supported by substantial evidence or whether any procedural deficiency negatively impacted the charter school's ability to refute or remedy the alleged violation. Furthermore, section 11968.5.5 provides a further right of appeal to the SBE within 30 calendar days based upon the record before the Authority and the county office of education.

The new regulations also provide for an expedited revocation process if there is a severe and imminent threat to pupil health or safety. (Cal. Code Regs., tit. 5, § 11968.5.3.) The regulations define "a severe and imminent threat to pupil health or safety" as that which "occurs when a charter school's structures, systems or practices are in a condition that poses a severe and imminent threat to the health or safety of pupils while at school, and where the charter school has made no reasonable attempt to remedy the condition or no remedy exists to cure the condition" but "does not include any cosmetic or nonessential repairs or severe threats for which the school has initiated corrective action and has removed the pupils from any immediate danger." (Cal. Code Regs., tit. 5, § 11965(e)(4) & (5).) Under those circumstances, the Authority may immediately revoke the school's charter by approving and delivering a Notice of Revocation by Determination of a Severe and Imminent Threat to Pupil Health or Safety to the charter school's governing body. The charter school may then appeal the revocation to the county board of education or SBE, pursuant to Education Code section 47607(f) and (g).

We note that revoking a charter petition can be a complicated, long and expensive process. If you have any questions regarding the new revocation regulations or charter school issues generally, please contact one of our [eight offices](#) located statewide, visit our [website](#), or follow Lozano Smith on [Facebook](#).

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