

Charter schools: Four common pitfalls for school districts to avoid

By Lozano Smith

Charter schools may offer advantages to school districts by providing parents a wider choice of educational placements for their children. Many times, however, school districts wind up subsidizing a charter school's operations. Below are four common pitfalls for school districts to avoid when a charter school comes to town:

Providing and maintaining charter school facilities. Sometimes the school district is required, by law, to provide facilities (e.g., Proposition 39); sometimes not. Either way, a school district's facilities agreement with a charter school should clearly delineate which party is responsible for maintenance, repairs, custodial services and technical infrastructure. If the district houses the charter school at a closed school site, providing maintenance and custodial services is an opportunity to preserve the jobs of school district employees. However, if the school district takes on the obligation to clean, repair and maintain the facilities, it should negotiate sufficient fees in order to avoid subsidizing the charter school's facilities costs.

Building or buying charter school facilities. Some charter schools purchase or build their own facilities. The charter school may request that the school district adopt a resolution exempting the charter school from local zoning ordinances. (Gov. Code §§ 53094, 53097.3.) Or, the school district may be the "lead agency" for CEQA purposes. (Pub. Res. Code § 21067.) There are many political and legal issues to consider before

a school district steps into the facilities abyss. The school district should have a written agreement with the charter school stating that the charter school will defend and indemnify the district in any litigation that may result.

Calculating the special education encroachment contribution. A school district may find itself to be the ultimate guarantor of special education for a charter school's students with disabilities. (Ed. Code § 47640.) In exchange, the charter school contributes its "equitable share" to the school district's special education encroachment. (Ed. Code § 47646(c).) The school district will have likely incurred staffing and legal costs to ensure that the charter school is providing a free appropriate public education to its students. Therefore, the district should have a written agreement in place that clearly states how the charter school's encroachment contribution will be calculated.

Calculating the district's "in lieu" property tax payments to the charter school. If the school district is the "sponsoring local educational agency" of the charter school, the district is responsible for making monthly "in lieu" payments to the charter school. (Ed. Code § 47635.) The amount of these payments

depends on the charter school's average daily attendance. A school district that initially denies a charter school petition, which is later approved by the county board of education, is still obligated to make these payments. (Ed. Code § 47632(j)(2).) The state will "backfill" the school district for the funding, but the payments may still impact the district's cash flow. Further, basic aid districts do not receive complete reimbursement from the state. (Ed. Code § 47663.) The district should be aware of its "in lieu" payment obligations before a charter petition is granted. The charter school should be obligated, in writing, to provide the school district with accurate and current average daily attendance information.

Lozano Smith specializes in reviewing initial petitions to charter a school, preparing operational MOUs and MOUs for special education services with charter schools, and counseling districts with oversight, renewal and revocation processes. Contact Ed Sklar, managing partner of Lozano Smith's Walnut Creek office and co-chair of the firm's Charter Schools Practice Group, where he advises school districts on managing California's charter school landscape. Esklar@lozanosmith.com.

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