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Office of Administrative Law Gives New Revocation Rules A Temporary Setback

On March 30, 2011, the California Office of Administrative Law (OAL) disapproved new rules adopted by the State Board of Education in January regarding charter revocations and revocation appeals. The reasons for the disapproval were largely technical, and the regulations will likely be corrected and readopted at the Board meeting in July. The Board has 120 days to resubmit the regulations to OAL or else the rulemaking process must start over.

The proposed regulations are the product of a two-year drafting and consultation process to provide significant new protections to charter schools facing revocation. For example, the regulations make clear that the only entity authorized to revoke a school's charter is the same entity that initially granted a school's charter. That "chartering authority" is the governing board of a school district or county office of education and not, for example, school district staff members or a district superintendent. The actions of a governing board must occur in public under the Brown Act, making it easier for charter schools to understand and respond to the reasons for revocation. The new regulations require notices that identify the specific evidence supporting the revocation and what a school must do to cure the problem.

The proposed regulations also provide charter schools important new rights to appeal a revocation decision to a county board and the State Board on procedural grounds under Education Code §§ 47607(f) and (g). That is, in addition to showing why the factual findings of the chartering authority are not supported by substantial evidence, a charter school will also be allowed to challenge any procedural errors, such as not giving the charter adequate notice of the reasons for revocation or a fair opportunity to present a complete defense. If the chartering authority does not follow the new rules of notice and fair hearing described above, the reviewing board may reverse the district decision.

We anticipate that the State Board will reconsider the proposed regulations during its July 13-14 meeting and provide the public with an opportunity to submit comments regarding any proposed changes that are made in response to the OAL disapproval.

If you should have any questions regarding this update, or would like help in defending your charter from a revocation action, please contact Michelle Ruskofsky (mruskofsky@mymlaw.com) or Michael Hersher (mhersher@mymlaw.com) at the Law Offices of Middleton, Young & Minney, LLP at (916) 646-1400. Or find us on the web at: www.mymcharterlaw.com.

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