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Charter School's Separate Domain Name Maintains Confidentiality

Many charter schools utilize the domain name of the granting agency for their websites and email addresses (e.g., johndoe@grantingagency.k12.ca.us). Generally, the utilization of the domain name of the granting agency also involves routing all email through the school district's servers. Most school districts require all individuals utilizing the email system to sign some form of Electronic Network Use Agreement which notifies the individual that the school district owns the servers and may monitor and access all emails sent through the servers. Consequently, the school district maintains unfettered access to all the email correspondence coming and going from the charter school's employees including confidential information (e.g., attorney-client privileged correspondence, personnel matters, confidential medical information, student records etc.).

For an independent charter school (e.g., a charter school organized and operating as a nonprofit public benefit corporation) this may cause a number of different problems. For example, in order to maintain the attorney-client privilege of correspondence the charter school must take all reasonable steps to maintain the confidentiality of such information. If a third party has access to these communications the attorney-client privilege may be lost. Moreover, if these communications include medical information about employees or students the release of this information may create a liability for the charter school. If the charter school's communications are stored on the school district's servers this information could be reviewed by employees of the school district in violation of the charter school's obligation under confidentiality laws or worse, could be produced publicly in response to a Public Records Act request.

Control of confidential or otherwise privileged information is critical to containing potential liabilities associated with the release of such information. In addition, immediate access to this information is important to fulfilling the charter school's supervisory function as an employer. Charter schools can be found liable for negligent hiring and supervision if they fail to act when they knew or should have known there was a problem. Limited access to e-mail communications by charter school employees may inhibit a charter school's ability to effectively oversee its employees. (These same concerns would hold true for school district centralized voicemail systems).

What should you do?

A charter school should consider securing its own domain name (e.g., www.newcharterschool.org) and hiring a vendor or an Internet Service Provider ("ISP") that can process the email management for the charter school (either outsourced or on the charter school's equipment). This will allow the charter school to maintain confidentiality and control over all employee emails. In addition, charter schools should adopt internet safety policies and have all employees sign a Network Use Agreement prior to allowing access to the charter school's internet and email systems.

If you should have any questions regarding this update, please contact Paul C. Minney (pminney@smymlaw.com) or Jim Young (jyoung@smymlaw.com) at the Law Offices of Spector, Middleton, Young & Minney, LLP at (916) 646-1400.

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