

HARNESSING CHARTER SCHOOL EMPLOYMENT FLEXIBILITY: BUILDING A FOUNDATION FOR SUCCESS

BY JAMES YOUNG

SPECTOR, MIDDLETON, YOUNG & MINNEY, SACRAMENTO

UPON THE STARTLING realization of just how many employment laws apply to charter schools, charter school operators frequently lament that it seems as though they are learning by too many of the legal requirements and employment "red tape" they ought to avoid by starting a charter school in the first place.

However, despite this common misconception, charter schools really do enjoy a tremendous amount of flexibility in establishing and maintaining a workforce that can bring into being the creativity and innovation promised by the Legislature in the Charter Schools Act of 1992.

Specifically, contrasting the framework for charter school employment with the statutory framework for school district employment, it is readily apparent that significantly greater rights are afforded charter school employers. For example, all certified and non-certificated employees in school districts must be classified as "substitute," "temporary," "probationary" or "permanent" employees, and those classifications place such employees on "tracks" by which they ultimately become "permanent" with the school district.

Once permanent or tenured, the release of a mediocre or under-achieving employee can be very difficult, costly and time-consuming. Further, school districts must evaluate employees pursuant to a statutory laundry list of specific requirements, and generally speaking, awarding high-achieving employees through creative compensation systems is difficult to implement in school districts.

In contrast, charter school employers can substantially participate in the formulation and execution of fundamental school policy and practice, and absent a prohibition in an applicable collective bargaining agreement, charter schools need not classify any employees or grant permanency or tenure. Employees can also be evaluated in a number of creative ways, and charter schools are free to design compensation plans that

reward excellence. This flexibility if harnessed properly, can provide the necessary foundation for success.

EMPLOYEE RIGHTS

While charter schools are held accountable for achieving results, they are free to hire and maintain employees in multiple ways to achieve their objectives. For example, employees may be hired on a "pay-as-you-go" basis, or depending on numerous organizational factors, charter schools can provide greater rights to employees such as an "agreed to" severance amount in the event the employee is released mid-year without cause.

Employees may also be given a right against termination during the school year unless just cause exists, but the charter school may retain the right to decide not to renew the contract at the sole discretion of the school board. Charter Schools are also free to offer "permanency" to their employees. There are, no doubt, many important organizational considerations that will determine what types of rights any charter school ultimately desires to afford its employees. Whatever for next year's charter school selection, the school and the employee should clearly understand the relationship. This is commonly done through the use of employment contracts, detailed employment handbooks, and personnel policies.

PERFORMANCE EVALUATION & COMPENSATION SYSTEMS

While school district employees are generally evaluated pursuant to detailed provisions enumerated in the Education Code, charter schools are free to establish any evaluation system deemed appropriate given the mission of the school. Of course, if a collective bargaining agreement applies, that agreement will control evaluation procedures.

However, many charter schools have developed innovative and streamlined evaluation systems. One novel system is to seek

input from the employee's supervisor, co-workers and students (known as the 360-degree evaluation). Charter schools may also establish evaluation systems which seek the input of parents, or require teacher self-evaluation or portfolios or a combination of any of these tools. Several charter schools have also enacted reward systems for teachers and other employees who effectively advance the mission of the school. Except for any applicable collective bargaining agreements, there are virtually no statutory limitations concerning how charter schools may reward high-achieving employees.



TIPS FOR MAXIMIZING YOUR GOALS

As a first step to maintaining the flexibility provided in the statutory framework establishing charter schools, it is critical that the Board and administration of any charter school clearly understand the school's legal employment obligations - but more importantly, it is essential that the school understand and articulate the status of its employees and their attendant employment rights from inception of the hire. In furtherance of this goal, charter schools should periodically review all employment policies, contracts, job descriptions and related documents to ensure that such documents are clear and consistent with the charter or other governing documents. In so doing, charter schools can forcefully advance the mandate of the Charter Schools Act of 1992 by establishing examples of excellence in education. ■

James Young, principal of Spector, Middleton, Young & Minney, LLC, has represented charter schools throughout California for over a decade. Visit www.amycharterlaw.com.