

How to Avoid Costly Credentialing Mistakes

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SMYM represented the Aurora Charter School in its successful litigation against the Sequoia School District to secure a Proposition 39 facility. In addition, SMYM successfully represented the BASIS charter school against a school district which withheld its in lieu of property tax funding in an effort to secure compliance with its charter.

In October 2002, the Fiscal Crisis and Management Assistance Team (FCMAT) recommended the disallowance of over \$900,000 of ADA to a particular charter school, attributable to alleged credentialing mistakes.

FCMAT concluded that the charter school violated the Charter Schools Act when it: (1) assigned teachers in core and/or college preparatory classes outside their credentialing assignment restrictions; and (2) assigned non-credentialed teachers to teach non-core and/or non-college preparatory classes. FCMAT also concluded that these credentialing mistakes are conditions of apportionment. (FCMAT's conclusions are advisory to the agency that contracted its services)

Parts of FCMAT's findings contradicted the California Department of Education's position on charter school credentialing. As such, the Department issued a legal opinion countering some of FCMAT's conclusions and further clarifying its own, stating: (1) teachers in core or college preparatory classes must "hold a valid credential with respect to grade level and subject area that would be required of a teacher in non charter school"; (2) non-core or non-college preparatory classes may be taught by non-credentialed teachers; (3) a valid credential for a teacher in a core or college preparatory class is a condition of apportionment; and (4) "misassignment" of a credentialed teacher in a core or college preparatory class is not a condition of apportionment.

By concluding as they did the Department rejected FCMAT's findings and authorized full funding for the particular charter school.

So what should charter schools do to avoid costly credentialing mistakes?

The Golden Rules

A wise person once said: "He/she who holds the gold makes the rules." Since the Department certifies attendance and apportionment for charter schools, it holds the gold. As such, it is highly recommended that charter schools follow its guidance.

Although the Department's guidance is not controlling law, most state agencies and courts will defer to its interpretation. Moreover, the Department will generally assist in defending its position and will continue to fund the charter school pending review. Historically, the Department has allowed a period of amnesty in the event of court direction or legislative change.

1. Core or College Preparatory Classes

Education Code Section 47605(l) requires teachers in core or college preparatory classes "to hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold." Core classes are generally considered to be English, language arts, mathematics, history-social science, and science. College preparatory courses include core and other courses required for college admission.

Charter schools should clarify with their granting agency their core or college preparatory classes. All other classes may be taught by non-credentialed teachers. If such an agreement becomes part of the charter then it should include a provision that requires the granting agency to pro-

vide the charter school an opportunity to cure if the granting agency determines that a core or college preparatory teacher is "misassigned" (i.e., teaching outside his/her credentialing restrictions).

2. Non-Core or Non-College Preparatory Classes

Education Code Section 47605(l) further states that: "charter schools be given flexibility with regard to non-core, non-college preparatory courses." The Department has taken the position that non-core and non-college preparatory teachers do not need a credential. However, the Department has stated that: "this flexibility would only apply in a school setting that offers a departmentalized structure in which a teacher may teach only one subject." This may not benefit elementary charter schools with self-contained classrooms.

3. Conditions of Apportionment

Although the Department has concluded that teachers in core or college preparatory classes must teach within their credential restrictions, they have also concluded that non-compliance with this guidance is not a condition of apportionment (as long as the teacher has a valid California credential).

The issue of holding a credential as a condition of apportionment may be challenged in the future. Clearly the legislature knows how to make a legal requirement a condition of apportionment (e.g., §47612.5(a)). The Charter Schools Act, however, is devoid of any requirement that holding a credential is a condition of apportionment. But for now, until someone makes this challenge or is able to rally a legislative fix, the golden rule has been established. ●

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