



LAW OFFICES OF SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP

CDE RELEASES LEGAL OPINION ON LEGALITY OF MANDATORY PARENT PARTICIPATION AGREEMENTS

On February 9, 2006, the Department of Education, through Michael Hersher, Deputy General Counsel, issued a legal opinion which concludes that a charter school may implement a mandatory parent participation obligation as a condition of enrollment. Specifically, Mr. Hersher addressed the question of “whether a charter school may require a parent to sign an agreement to perform certain hours of work for the benefit of the charter school, as a condition of admitting the student to the school.”

After a discussion regarding the potential conflicting provisions of law which allow a charter school to have “admissions requirements” (Ed. Code Section 47605(b)(5)(h)) but requires a charter school to “admit all pupils who wish to attend” (Ed. Code section 47605(d)(2)(B)), Mr. Hersher concludes that the only way to harmonize these provisions in accordance with common maximums of statutory construction would be to find that a charter school must admit all students, regardless of residence, who would meet the lawful criteria for admission (including mandatory parent participation requirements).

In recent years the dialogue around mandatory parent participation has raised a number of concerns. The ACLU and some legal counsel for school district’s have claimed that a mandatory parent participation agreement violates the California Constitutional free schools clause and the anti-tuition provisions of the Charter Schools Act (arguing that mandatory participation in the charter school’s activities is akin to charging a fee for admission to the school). Moreover, schools that have already implemented a mandatory parent participation agreement have faced challenges when expelling students whose parents have failed to meet the mandatory parent participation obligations.

A charter school that is considering implementing a mandatory parent participation agreement as an admission requirement or as a preference in the enrollment process is strongly encouraged to seek advice of legal counsel before implementing such a program (note that all admission requirements must be included in the charter). While the courts will give deference to advisory opinions issued by CDE, the legal opinion is not controlling law and your granting agency may disagree. A copy of the CDE legal opinion can be found on our website at www.smy charterlaw.com/resources.html

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

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