



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

Important Proposition 39 Update

California Court of Appeal Determines that Charter School Proposition 39 Request is Incomplete Unless It Includes Supporting Documentation

On September 10, 2004 the California Court of Appeal issued a published decision in the matter of Environmental Charter High School v. Centinela Valley Union High School District (2004 WL 2011370). This decision, while not controlling in all jurisdictions throughout California, will likely impact the way school districts review and evaluate requests for facilities under Proposition 39. Unfortunately, as discussed below, this decision creates more questions than it answers.

In this case, on October 1, 2002 Environmental Charter High School ("Charter School") wrote Centinela Valley Union High School District ("District") a request for facilities under Proposition 39. The Charter School projected a total of 246 in-District students and provided information about its instructional calendar, the general geographic area in which it wished to be located, and specific facility needs for the program. In response, the District requested the following information: student names and dates of birth, home addresses, names of parents or guardians, grade levels, and the schools and school districts attended.

As part of the annual Proposition 39 facilities request, Title 5 section 11969.9 (c)(1)(C) requires, "if relevant, documentation of the number of in-district students meaningfully interested in attending the charter school." The District contended that all charter schools must provide documentation with the facilities request. The Charter School argued the documentation requirement applied only to new charter schools and not to existing charter schools. If the information was required, it argued it could not comply because the information was confidential (under state and federal law) and could not be released without parental consent.

Although the trial court sided with the Charter School and awarded attorneys fees against the District, the Court of Appeal overruled the trial court's decision and sided with the District, concluding that ALL charter schools must submit relevant documentation. The Court stated that: "when a charter school submits a facilities request, it must make a showing of its enrollment projections with relevant documents." The Court found that the Charter School request for facilities was incomplete because it did not "provide any relevant documentation, i.e., documentation that would provide a foundation for Environmental's projections and enable Centinela it to review the reasonableness of those projections." The Court failed to address the Charter School's arguments regarding the confidentiality and the prohibition of release of confidential record information in the absence of parental consent.

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Unfortunately, because the Court of Appeal found that the District had the right to deny the facilities request because it was incomplete (i.e., it did not include any supporting documentation) the Court specifically stated that "we need not decide what information a charter school must provide to satisfy" the regulations.

The only bit of guidance that we can discern from the Court's decision is that, absent an agreement between the charter school and the district regarding supporting documentation, a charter school should submit its Proposition 39 facilities request sufficiently in advance of the deadline so as to remedy any deficiencies that may be noted by a school district before the annual application deadline passes.

This matter may be taken up on appeal to the California Supreme Court. Please watch for future Legal Alerts regarding this matter.

If you should have any questions regarding this update, or would like a copy of a sample Proposition 39 request letter, please contact Paul Minney at (pminney@smymlaw.com) at the Law Offices of Spector, Middleton, Young & Minney, LLP at (916) 646-1400.

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