



LAW OFFICES OF MIDDLETON, YOUNG & MINNEY, LLP

NEW LAW REQUIRES CHARTER SCHOOLS TO ADOPT POLICY GUARANTEEING STUDENT RIGHTS TO FREE SPEECH AND PRESS

Pursuant to SB 438, effective January 1, 2011, California charter schools must comply with long standing Education Code Sections 48907 and 48950 which generally afford free speech and press rights to students, subject to reasonable time, place and manner restrictions.

Material provisions of Section 48907 provide:

- 1. Free Speech Rights:** Pupils of charter schools shall have the right to exercise freedom of speech and of the press, including the use of bulletin boards, distribution of printed material or petitions, the wearing of buttons, badges and other insignia, and the right of expression in official publications, except for speech which is obscene, libelous or slanderous, or which creates a clear and present danger of the commission of unlawful acts or violation of school regulations, or substantial disruption to the orderly operation of the school; and
- 2. Written Publications Code:** Charter school governing boards shall adopt rules and regulations in the form of a written publications code, which shall include reasonable provisions for the time, place, and manner for such activities; and
- 3. Responsibility Remains With Journalism Advisers:** Pupil editors of official school publications may be responsible for assigning and editing the news, but journalism advisers (school employers) remain ultimately responsible to supervise and maintain professional standards of English and journalism.

Material provisions of Section 48950 provide:

- 1. Protection Against Discipline For Protected Speech:** For high school students, if speech would be protected when engaged in outside of campus, such speech may not be the basis of student discipline; and
- 2. Free Speech Does Not Protect Harassment or Threats:** The free speech/press protection does not protect students from discipline for speech which constitutes harassment, threats or intimidation; and
- 3. Reasonable Time, Place and Manner Restrictions Are allowed:** The law does not prohibit a charter school from promulgating reasonable restrictions on time, place and manner of speech.

The new legislation also creates a state mandated local program. As such, certain costs associated with implementation/compliance with these laws must be reimbursed by the state. Thus, proper records should be maintained to file effective mandated reimbursement claims.

For a copy of the full text of Sections 48907 and 48950, please visit our website. Further, if you should need assistance drafting a publications code/policy, please feel free to contact our office at 916-646-1400 and ask for Jim Young (jyoung@mymlaw.com) or Julie Robbins (jrobbins@mymlaw.com).

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