

LEGAL UPDATE

Local Educational Agencies (including Charter Schools) May Contract for Student Transportation with Public and Private Parties Who Have Been Subjected to Criminal Background Checks - California Attorney General Opinion No.00-902 (2001)

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In a recent published opinion, the California Attorney General opined that school districts may contract for the transportation of pupils to and from school by common carrier or private parties. Any person, however, engaged in pupil transportation must first undergo criminal background procedures. While Attorney General opinions are advisory opinions only and therefore not controlling authority, they are given great deference by courts and are usually excellent statements and indicators of current law.

Authority to Contract for Pupil Transportation

The issue presented to the Attorney General's office was a narrow issue, specifically whether school districts may contract for taxi cab services to transport children to and from school. The Attorney General, relying on the language of Education Code § 39800, stated its answer in broader terms: School districts are expressly authorized to contract and to pay for the transportation of pupils to and from school by common carrier or municipally owned transit systems or responsible private parties.

Criminal Background Checks

The Attorney General further concluded that a criminal background check procedure involving fingerprint clearance by the Department of Justice must be conducted on any person engaged in pupil transportation under contract with a school district. Education Code § 45125.1(f) provides that any employee of an entity under a contract with a school district that comes into contact with students must first undergo a criminal background check. Because persons engaged in transportation of pupils will have significant contact with students, they are therefore within the meaning of Education Code § 45125.1(f). In addition, Education Code § 45125.1(i) states that charter schools are a school district for purposes of Education Code § 45125.1. Consequently, the same analysis is applicable to a charter school.

Charter schools contracting for transportation services should make certain that all persons currently engaged in transporting pupils have completed a criminal background check as specified in Education Code § 45125.1 and that all prospective persons not begin transporting students until completing the required criminal background check.

If you have any questions regarding the Attorney General's Opinion, or would like to receive a copy of the opinion, contact Phillip Murray (pmurray@smymlaw.com) or Paul Minney (pminney@smymlaw.com) at the Law Offices of Spector, Middleton, Young & Minney, LLP (916) 646-1400.

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