



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

## LEGAL ALERT

### *Court Ruling on Charter School Funding: A School District's Obligation to Transfer In Lieu of Property Taxes is a Ministerial Obligation*

The Bay Area School for Independent Study (BASIS) filed a writ of mandate against its granting district seeking to compel the school district to transfer in lieu of property taxes by the 15<sup>th</sup> of each month as required by Section 47635(b). The issue arose because the Charter School's granting district alleged that, through its oversight authority, it had the discretion to withhold these funds from the Charter School until it could determine that the Charter School had not violated any law that was a condition of apportionment. The underlying controversy between the parties revolves around the District's request for credentialing and other documentation regarding teachers and certain student information. The District had informed the Charter School that certain requirements must be met prior to the release of these funds. The Charter School acknowledged the district's entitlement to the requested information but challenged the position of the district to withhold funding until all of the requested information is received and reviewed by the district.

On November 13, 2002 the Alameda Superior court rejected all of the district's arguments and ordered the district to transfer the funding. The Court primarily relied upon the fact that the funding sections state that the school district "shall" transfer funding in lieu of property taxes. However, the Court was also persuaded by the fact that the school district could enforce its concerns through the revocations proceedings that allow a reasonable opportunity to cure. The Court concluded by stating that the withholding of funding from a charter school cannot be used as an enforcement mechanism.

The Court required the District to "henceforth comply" with the provisions of Education Code Section 47635 now and in the future. This decision supports the clear mandate on Districts under Education Code Section 47635, which says that a charter-granting agency "shall disburse in lieu of property tax funds to the charter school by no later than the 15<sup>th</sup> of each month." While a charter school has a duty to respond to all reasonable inquiries from its charter-granting agency, its charter-granting agency does not have the authority to withhold funding from the charter school under the auspices of noncompliance with its requests for information.

If you have any questions regarding this update or would like a copy of the Court's order, please contact Jessica J. Hawthorne at ([jhawthorne@smymlaw.com](mailto:jhawthorne@smymlaw.com)) or Paul C. Minney ([pminney@smymlaw.com](mailto:pminney@smymlaw.com)) at the Law Offices of Spector, Middleton, Young & Minney, LLP at (916) 646-1400.

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