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San Diego Unified Denies Students Legal Right to Classrooms While it Rents Available Campuses to Private Schools

Written by Gary Larson, CCSA – Fanno Charter Academy and KIPP Adelante, two high-quality public charter schools in San Diego County that both serve an almost entirely underserved student population, announced this week that they are taking the San Diego Unified School District to court over the District’s failure to provide their students with classrooms as required by law.

At issue in this case is equal access for public school students under law. Proposition 39, a law passed by California voters in 2000, mandates that school districts share public school facilities fairly among all public school students, including those attending charter schools.

Despite its clear legal obligation, San Diego Unified’s Board of Education has ignored the law by denying eight of the nine requests for facilities made by its start-up charter schools, including those of Fanno and KIPP. The actions by the District have created severe hardships on these charter schools, and even contributed to the closure of one charter school this fall.

The District’s main claim for denying facilities to its charter schools is that it doesn’t have available space for them. However, enrollment declines in the past five years in the neighborhoods surrounding KIPP and Fanno alone have created close to 3,000 empty seats capable of housing the charter students. Fanno and KIPP’s combined enrollment is less than 350 students. Also, while San Diego Unified’s Board has ignored repeated requests for facilities for its charter school students, the district has rented several public school facilities to private schools.

“All these schools are asking for is that their students be treated the same as all other public school students, as the law requires,” said Caprice Young, President and CEO of the California Charter Schools Association. “Charter schools are showing that they are a strong part of the solution for our public school system. School districts need to come to grips with the fact that the law won’t allow them to shortchange their own students when it comes to providing classrooms.”

The facilities fight comes at a time when San Diego’s charter schools are flourishing given their growing demand from parents and public school teachers. This fall, 13 new charter schools opened up in San Diego Unified and overall, charter schools in San Diego are showing stronger achievement gains compared to non-charter public schools. Also, some of the consistently highest performing public schools in all of San Diego, High Tech High School and the Preuss School for example, are charter schools.

Since charter school law was enacted in California in 1992, the largest single impediment to the creation and growth of high-quality charter schools has been the lack of adequate facilities. Prior to this law, charter schools had to pay for facilities out of their general operating revenue.

This has in some cases forced many charter schools to close or turn away students – many charters have waiting lists of up to thousands of students that cannot be accommodated due to ongoing facilities constraints. Proposition 39, passed by California voters in 2000, was intended to guarantee that charter school students receive equitable treatment with regard to facilities.

There have been two precedent-setting legal cases on charter schools and their right to adequate facilities. In 2002, Aurora Charter High School was victorious in a lower court and later on appeal when the Sequoia Union High School District tried to deny them facilities. In 2005, Ridgecrest Charter School was victorious on appeal against Sierra Sands Unified School District for not providing facilities as the law requires.

Representing the charter schools in their legal fight are Paul Minney of Spector, Middleton, Young and Minney, one of the foremost legal experts on charter school law who was victorious in the two precedent-setting legal cases; and Mike Weaver, Senior Partner with Latham & Watkins, LLP, a longtime respected litigator based in San Diego.

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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