



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

Navigating Your Way Through the Resolution of Audit Exceptions

The annual fiscal audit raises many questions and legal issues for charter schools. How the charter school addresses these questions and legal concerns can greatly impact a charter school's right to funding. This *Legal Alert* is intended to give a brief overview of some of the pending legal issues facing charter schools in the annual fiscal audit and appeal process.

A charter school is required to submit a copy of its annual, independent, financial audit report for the preceding fiscal year to the State Controller's Office (SCO), the Department of Education (CDE), the county superintendent in the county in which it is located, and its granting agency by no later than December 15 of each year. Typically, a charter school's audit begins during the summer for the prior fiscal year. The auditor should provide the charter school with an interim report including findings and recommendations and provide the charter school with an opportunity to respond to any findings and recommendations prior to finalization of the report. It is imperative that each charter school understands the import of its responses in the audit report and the process to follow should an audit exception be contained in the final audit report.

Unfortunately, state agency interpretations differ regarding the auditing standards applicable to charter schools and the process for the resolution of audit exceptions. Charter schools should understand the options available to them and the requisite procedural requirements for each option.

- **Work With Your Auditor.** Be sure you understand what standards your auditor uses and the basis for each audit finding before the auditor completes your audit. In the event that there is an audit finding presented to your school, the school must review the findings and respond carefully and accurately. It is highly recommended that you contact legal counsel before responding to audit exceptions. Many auditors are using auditing standards and criteria that may not be applicable to charter schools (for example, auditors accustomed to auditing school districts may apply the K-12 Audit Guide standards applicable to school districts). How you respond in the report could impact your rights to appeal and the likelihood of success on appeal.
- **Appealing To The CDE.** It must be emphasized that, if a charter school does not respond to an interim audit finding with evidence contrary to the auditor's findings, then the CDE will presume that the finding is correct and the school has conceded to its detriment. In certain circumstances the best course of action may be to appeal the findings to the CDE. The CDE has the authority to negotiate a repayment plan or other remedy for audit exceptions. Unfortunately, the CDE does not have a well-defined process for seeking relief from audit exceptions.
- **Education Audit Appeals Panel ("EAAP").** EAAP is a statutorily authorized entity created to assist school districts in resolving apportionment significant audit exceptions. It is unclear whether the EAAP process applies to charter schools; in most cases it is the position of this office that EAAP does not apply to charter schools. Nonetheless, many auditors have been

advising charter schools to seek a remedy through EAAP. The process is expensive and not well defined. In addition, the requisite timelines associated with the EAAP process are very short. It is therefore important to immediately (after receipt of the final audit report) consult with legal counsel to determine the most effective resolution for your school. Generally, seeking relief through EAAP will preclude you from seeking a waiver from the State Board of Education.

- **Waivers.** A charter school may seek a retroactive waiver from the State Board of Education under limited circumstances. Our office tracks the SBE waivers for charter schools and can advise your school on the potential for success if this route is pursued.
- **Judicial Challenge.** It is possible in certain circumstances to challenge the audit finding in court.

Auditing standards for charter schools are very much in dispute. Unfortunately, auditors typically use the school district rules for auditing charter schools and may in many cases incorrectly apply such standards to charter schools. This office is carefully monitoring EAAP, CDE, and SCO regarding audit standards, audit findings and audit appeals processes for charter schools -- watch for further legal updates in this regard.

Negative audit findings can both cost your school significant money as well as form the basis for a potential revocation or nonrenewal. It is imperative your school contact legal counsel as soon as possible when it recognizes that a negative audit finding may be included in the final audit report. There are many ways legal counsel can assist your school to spare it from negative audit exceptions that could potentially cost your school significant financial resources.

If you should have any questions regarding this update, please contact Paul Minney at pminney@smymlaw.com or Jessica Hawthorne at jhawthorne@smymlaw.com at the Law Offices of Spector, Middleton, Young & Minney, LLP at (916) 646-1400.

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