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## Court of Appeal Upholds Charter School Release of "At Will" Employee

In *Squillicote v. Ridgecrest Charter School* (2012 Cal.App. LEXIS 2376) the Court of Appeal upheld the charter school's release of an "at will" teacher from her employment contract during a closed session of the school governing board. The Court rejected arguments by the employee that [1] the teacher tenure provisions of the Education Code were incorporated into her contract by reference, [2] that the "mega-waiver" of Education Code section 47610 was inapplicable to "tenure" laws, [3] that application of the mega-waiver constituted a denial of the constitutional right to equal protection, and [4] that the governing board violated the Brown Act by holding a hearing on charges in closed session.

In *Squillicote*, the charter school adopted a policy early in its development that expressly stated various tenure provisions of the Education Code applied to its teachers. The school later adopted an "at will" policy through its Employee Handbook and in provisions of the standard employment contract. However, the original policy was never formally rescinded. Although the Court of Appeal held that the terms of the contract prevailed, it also observed that several board policies and contract provisions were inconsistent and created ambiguity. Indeed, it was these ambiguities that led the employee to seek review by the Court of Appeal of the trial court's decision in favor of the charter school. This decision reinforces the importance of reviewing charter employment provisions, employment contracts, and personnel policies to ensure clarity and consistency, and in revising these documents periodically to reduce the risk of litigation.

With regard to the mega-waiver argument, (Education Code section 47610), the Court easily concluded that the Legislature intended charter schools to be free from the constraints of the tenure provisions that apply to school districts. The Court also held that the Legislature had a rational basis for treating charter school employees differently than school district employees, based on the stated goal of moving from a "rule-based to a performance-based accountability system."

As to the Brown Act claims, under Government Code section 54957(b)(2), if a governing board intends to hold an evidentiary hearing on "charges or complaints" against an employee, the employee must be notified and given the option to have the hearing in open session. In this case, the governing board properly met in closed session for the limited purpose of considering the recommendation of its Executive Director to release the employee from her contract.

If you should have any questions regarding this update, please contact Michael Hersher (mhersher@mymlaw.com) or James Young ([jyoung@mymlaw.com](mailto:jyoung@mymlaw.com)) at the Law Offices of Middleton, Young & Minney, LLP at (916) 646-1400. Or find us on the web at: [www.mymcharterlaw.com](http://www.mymcharterlaw.com)

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