



LAW OFFICES OF YOUNG, MINNEY & CORR, LLP

SACRAMENTO ■ LOS ANGELES ■ SAN DIEGO ■ WALNUT CREEK

## **Two Separate Courts Side with YM&C in Upholding the Approval of Two Charter Schools by Separate County Boards of Education**

Young, Minney & Corr LLP (“YM&C”) recently prevailed in two separate legal challenges brought by school districts challenging the approval of charter schools by the Contra Costa and Santa Clara County Boards of Education following the denial of these charter petitions by the local school districts. Although the cases concerned some issues of law and fact unique to the individual matter, the cases had in common three critical issues: (1) whether a county board of education must either adopt or affirmatively refute the staff report prepared by the county office of education; (2) whether a court reviewing the approval of a charter petition is limited to evaluating whether the approval was “arbitrary, capricious, entirely lacking in evidentiary support, unlawful and procedurally unfair” or whether the court must further evaluate whether there was “substantial evidence” supporting the approval decision (i.e., whether the court may engage in a “weighing” of evidence); and (3) whether a county board of education must make specific findings prior to the approval of a charter petition. In both cases, all three of these issues were resolved squarely in favor of YMC’s charter school clients and their county board of education authorizers.

In the first case, *Mt. Diablo Unified School District v. Contra Costa County Board of Education (“CCCBOE”)/Contra Costa School of Performing Arts Charter School (“SPA”) et al.*, Petitioner argued that CCCBOE was required to affirmatively refute a Contra Costa County Office of Education staff report that had recommended that CCCBOE deny the petition.

The Petitioner also argued that CCCBOE violated 5 C.C.R. 11967(b) by approving SPA’s charter on the condition that CCCBOE and SPA subsequently enter into a Memorandum of Understanding. Petitioner also argued that the approval of a charter petition, although a quasi-legislative act, should nevertheless be reviewed under the “substantial evidence” test that is applied to quasi-judicial acts.

In her February 3, 2016 Order After Hearing, the Hon. Jill C. Fannin, Judge of the Contra Costa County Superior Court, agreed with Respondents, holding that (1) the transcripts of the CCCBOE meetings were thorough enough and factual enough to demonstrate that all relevant factors were considered and there was a reasonable basis for CCCBOE’s decision; (2) there is no legal requirement for a county board of education to make specific findings prior to the approval of a charter petition; (3) there is no legal authority requiring a county board of education to refute or state its reasons for rejecting the recommendations of a county office of education staff report; and that (4) 5 C.C.R. 11967(b) does not prohibit the conditional approval of a charter petition.

As in the first case, the Petitioner in the second case, *Morgan Hill Unified School District v. Santa Clara County Bd. of Education (“SCCBOE”)/Voices College-Bound Language Academy at Morgan Hill School (“Voices”) et al.*, argued that the approval of a charter petition should be reviewed under the “substantial evidence” test.

Separately, the Petitioner sought to compel SCCBOE to commence revocation proceedings based on Voices' failure to execute a Memorandum of Understanding by a date specified in Voices' charter approval, despite the fact that the Memorandum of Understanding had already been executed, although after the specified date. Petitioner also argued that SCCBOE violated 5 C.C.R. 11967(b)(1) by "allowing" Voices to revise its budget on appeal under Ed. Code section 47650(j).

In his May 24, 2016 Order After Hearing, the Hon. William J. Elfving, Judge of the Santa Clara County Superior Court, agreed with Respondents, holding that (1) the approval of a charter petition is a quasi-legislative act and therefore reviewable under the "arbitrary, capricious or entirely lacking in evidentiary support" standard; (2) Petitioner had failed to meet its burden of proof to establish that SCCBOE's decision to approve Voices was arbitrary, capricious, entirely lacking in evidentiary support"; (3) there is no requirement that a county board of education (an agency acting in a quasi-legislative capacity) make findings indicating the reasons for its approval; (4) that 5 C.C.R. section 11967.5.1(c)(3)(B) does not apply to county boards of education; (5) a county board of education is under no legal obligation to adopt the a county office of education's staff report; (6) SCCBOE did not have a "ministerial duty" to revoke Voices' charter or to initiate revocation proceedings due to the non-execution of a Memorandum of Understanding by the date specified in the charter approval and that, in any event, this issue was moot; and that (7) SCCBOE did not violate 5 C.C.R. 11967(b) by allowing Voices to revise its budget when submitting its appeal under Ed. Code section 47605(j).

If you have any questions regarding this update, please feel free to contact Katie Ebert or Kevin Troy at the Law Offices of Young, Minney & Corr, LLP at (916) 646-1400. Or find us on the web at: [www.mycharterlaw.com](http://www.mycharterlaw.com).

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