LEGAL UPDATE

CHANGES TO BROWN ACT

Several important legislative changes to the Brown Act became effective January 1, 2003. These changes will significantly alter the conduct of charter school governing board meetings and provide protection for certain types of closed session communications.

SB 1643: Emergency Meetings

The Brown Act authorizes the school board to hold an emergency meeting when prompt action is needed to address actual or threatened disruption of the charter school's facilities. Previously, the Brown Act contained very narrow and specific instances for an authorized emergency meeting. SB 1643 extends the definition of "emergency situation" to include a "dire emergency." A school board may hold an emergency meeting without the one-hour notice required for emergency meetings if the meeting is held in response to a "dire emergency." A "dire emergency" is defined as "a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that adhering to the usual one-hour notice requirement would endanger public health or safety." In any case, the circumstances when an emergency meeting may lawfully be held are extremely rare. Special meetings may continue to be held with 24 hours prior notice.

AB 3035: Americans With Disabilities Act

AB 3035 now specifically requires that all open meetings be held in compliance with the Americans with Disabilities Act ("ADA"). AB 3035 does not impose any new requirement on public entities as public entities have always been under the ADA's legal obligations to provide access to open meetings to individuals with disabilities. AB 3035 also provides that a public entity must provide materials such as agendas and board packages to be made available in an "appropriate alternative format" when so requested by an individual with disabilities. Consequently, charter schools should implement procedures by where individuals with disabilities may request agendas and board packages in appropriate alternative formats. Generally, charter schools should provide a telephone contact on posted agendas for requests for appropriate alternative formats.

AB 1945: Confidential Information

AB 1945 now provides several remedies to prevent or penalize the unauthorized disclosure of confidential information obtained by any person in a closed session meeting.

AB 1945 defines "confidential information" to mean a communication pertaining to the subject matter of a closed session meeting. Charter schools are now expressly authorized to seek an injunction to stop a person from disclosing confidential information. In addition, charter schools are authorized to take disciplinary action against an employee who has willfully disclosed confidential information obtained in a closed session meeting. Finally, charter school

governing bodies may refer an unauthorized disclosure of confidential information to a county grand jury for possible civil action. It is also important to note that a charter school must provide employee training in handling confidential information before it may take disciplinary action against an employee.

It should be noted that AB 1945 specifically protects persons who divulge confidential information in certain instances, as for example when the person divulges confidential information while making a report to a county grand jury or a district attorney regarding the legality of a public entity's actions. A person is also protected when divulging confidential information pursuant to certain so-called "whistle-blower" statutes. In these instances, a charter school may not prevent or penalize the disclosure of confidential information.

SB 671: Employee Applications for Withdrawal From Deferred Compensation

SB 671 authorizes a school board to meet in closed session to discuss an employee's application for early withdrawal of funds in a deferred compensation plan when the application is based upon financial hardship arising from an unforeseeable emergency due to illness, accident, casualty, or other extraordinary event as specified in the deferred compensation plan.

This authorization is a narrow exception to the general requirement that public business be discussed in open session. Thus, the exception should be interpreted narrowly to allow a closed session meeting for only those applications based upon financial hardship. Thus, if an application is not based upon financial hardship, the application should be considered in open session.

If you should have any questions regarding this update, please contact Phillip Murray (pmurray@smymlaw.com) or Jim Young (jyoung@smymlaw.com) at the Law Offices of Spector, Middleton, Young & Minney, LLP at (916) 646-1400.