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**California Court of Appeals concludes a charter school operating as a nonprofit public benefit corporation is not a "public entity" under the California Tort Claims Act.**

On January 10, 2007, the California Court of Appeals withdrew its July 24, 2006 opinion in *Knapp v. Palisades Charter High School*, and released a new opinion after reevaluating the case in light of the California Supreme Court's recent decision in *Wells v. One2One* (see, [SMYM Legal Alert \*Joey Wells v. ONE2ONE Learning Foundation\*](#)). Although the decision is limited to the specific facts of the Palisades Charter High School ("PCHS") case, it potentially has enormous implications for charter schools operating as nonprofits throughout California.

In the Knapp case, minor Courtney Knapp ("Knapp") sued PCHS, among other parties, alleging that she was sexually harassed during a visit to PCHS in 2004, and that she suffered emotional distress as a result. Government entities are immune from suits of this kind if a claimant fails to adhere to the claim presentment requirements of the Government Tort Claims Act ("TCA") (Government Code Section 900 *et seq.*). Specifically, in order to sue a government entity under the TCA, an individual must first file a written claim with the entity within one year after the incident, and the entity must reject it. Government entities must also register with the Roster of Public Agencies to facilitate filing of written claims. If the entity does not register with the Roster of Public Agencies, an individual may still sue even if he/she fails to file a written claim properly. In the Knapp case, Courtney Knapp claimed she was not required to file a written claim with PCHS because PCHS was not a government entity and had not registered with the Roster of Public Agencies.

In the first Knapp ruling,<sup>1</sup> the Court of Appeals focused on the question of whether the Los Angeles Unified School District ("LAUSD") was the proper entity with which Knapp was required to file her claim under the TCA. The Court held that PCHS was a subdivision of LAUSD because it was not independent from LAUSD.<sup>2</sup> Therefore, because the charter school is a subdivision of the LAUSD, and PCHS is not a "public agency" required to separately register on the Roster of Public Agencies, the proper action would have been for Knapp to file her claim with LAUSD. Since Knapp failed to file her claim with LAUSD, the Court dismissed her lawsuit against PCHS.

While the first Knapp ruling was being appealed, the California Supreme Court handed down their decision in *Wells v. One2One Learning Foundation*.<sup>3</sup> In *Wells*, the Supreme Court ruled that the charter schools at issue, operated by a Texas for-profit

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<sup>1</sup> *Knapp v. Palisades Charter High School*, 141 Cal. App. 4th 780 (2006).

<sup>2</sup> In making this ruling, the court cited to *Wilson v. State Bd. of Education*, 75 Cal. App. 4th 1125 (1999), and held that charter schools "could never stray from under the wings of the chartering authority, the Board, and the Superintendent."

<sup>3</sup> 39 Cal. 4th 1164 (2006).

corporation, were not “governmental entities” for purposes of the California False Claims Act and “did not fit comfortably within any of the categories defined, for purposes of the TCA, as ‘local public entities.’” Therefore, the plaintiffs in the case were not required to file written claims with the government before filing a lawsuit under the TCA.

After the *Wells* case was issued, the Court of Appeals agreed to reconsider its PCHS decision. After the rehearing, the Court held that like the charter schools in *Wells*, PCHS (operating as a nonprofit public benefit corporation) is an independent legal entity from LAUSD *and is not a “public entity” for purposes of the protections of the TCA*. In making its ruling, the Court cited to the *Wells* case and reasoned that “the charter schools in question were operated, not by the public school system but by distinct outside entities -- including nonprofit public benefit corporations with independent legal identities -- that are given substantial freedom to achieve academic results free of interference by the public educational bureaucracy.”

In a post-*Knapp* and *Wells* world, charter schools operating as nonprofit public benefit corporations should understand that, while they may be characterized as private entities for the application of the False Claims Act, unfair competition laws, and the TCA, charter schools are still public to some degree (even the *Knapp* Court states that charter schools are deemed to be school districts under the Charter Schools Act.”). If charter schools were not, they wouldn't be able to receive funding and would not be public schools as determined in *Wilson vs. State Board of Education*. Such a finding may result in a violation of the constitutional provision that public funds cannot be appropriated for any non-public school.<sup>4</sup> Consequently, the *Knapp* and *Wells* decisions have made it very difficult for charter school operators to determine where they fall on the public or private entity continuum.

**Recommendation:** It is now more important than ever that individual charter schools seek legal counsel when trying to determine the applicability of certain laws to their school. The aforementioned decisions demonstrate that the organization of the charter school can impact the applicability of certain laws. Moreover, a charter school cannot extrapolate from these decisions and conclude that they are private entities for purposes of laws such as the Brown Act, Public Records Act, Political Reform Act, Educational Employment Relations Act, etc. In addition, charter schools must be very careful in making decisions regarding corporate organization based upon the respective laws that must be followed. For example, if a charter school were to argue it was a private entity to avoid the applicability of Government Code Section 1090 (conflict of interest laws) to its organization, that charter school could place itself clearly within the purview of the False Claims Act (and consequently be subject to treble damages, attorneys' fees, and bounty-hunter style plaintiffs).

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<sup>4</sup> *Wilson v. State Bd. of Education*, 75 Cal. App. 4th 1125 (Cal. Ct. App. 1999).

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