LITIGATION UPDATE

This Litigation Update provides an overview of recent California cases that directly impact the operation of California charter schools, and is presented by The Law Offices of Middleton, Young & Minney, LLP ("MYM"). MYM represents the charter school litigant in each of the following cases.

1. Conversion charter school Prop. 39 facilities rights: *Meadow Arts & Technology Elementary School ("MATES") v. Conejo Valley Unified School District ("District")(2009)* (Ventura County Case Number 56-2009-336393-CU-WM-SIM)

The District rejected MATES' conversion charter school petition, but their petition was later granted by the Ventura County Board of Education ("County"). Despite the approval of the petition, the District refused to allow MATES to occupy the conversion school site on the grounds that the charter approved by the County should be construed as a "start-up" charter school rather than a conversion charter school. The District also argued that Prop. 39 and its Implementing Regulations do not mandate the allocation of the conversion school site to a conversion charter school during its first year of operation. The District instead offered MATES a facility comprised of modular classrooms located on the campus of an existing District school, approximately 1.7 miles away from the converted school site. MYM filed a petition for writ of mandate seeking to compel the District to fulfill its legal duties under Proposition 39 and the Implementing Regulations. On May 11, 2009, the Honorable David R. Worley ruled that MATES is a conversion charter school and is thus entitled to commence its first year of operation at the converted school site. The court also prohibited the District from removing any furnishings and equipment from the conversion school site.

2. State Board of Education Proposition 39 Implementing Regulations: *California School Boards Association v. State Board of Education, California Charter Schools Association as Intervener ("CCSA")* (Sacramento Case Number 34-2008-00016957-CU-WM-GDS).

The California School Boards Association ("CSBA") sued the California State Board of Education ("SBE"), challenging the validity of the SBE's recent revisions to Proposition 39's Implementing Regulations. MYM obtained leave from the court to allow CCSA to intervene and thereby protect the interests of all California charter schools. After reviewing voluminous pleadings and records reflecting the regulatory process, and hearing several hours of oral argument, the Honorable Timothy M. Frawley upheld 95% of the SBE Proposition 39 Implementing Regulations. Judge Frawley singled out one section of the regulations, which arguably gives a conversion school the right to remain at its converted school site in perpetuity; he found this section to be in conflict with the statutory provision that allows a school district to move a conversion school when necessary. CSBA appealed the trial court's ruling upholding the regulations, and MYM, on behalf of CCSA, appealed the small portion of the ruling that is adverse to conversion schools. The appeal is pending.

3. State Board of Education ("SBE") Statewide Charter School Approval: California School Board Association *("CSBA") v. SBE, Aspire Public Schools as Real Party in Interest.* (Alameda Case Number RG 07353566) (First District Court of Appeal, 2008)

CSBA sued the SBE over the approval of Aspire Public Schools' ("Aspire") statewide benefit charter school. CSBA argued that Aspire allegedly failed to demonstrate "instructional services of a statewide benefit" and also failed to meet the conditions of approval prior to opening their first two school sites. MYM represents Real Party in Interest Aspire Public Schools. MYM and the California Attorney General successfully demurred to all five causes of action in the complaint. In granting the demurrer, the Honorable Kenneth Mark Burr found that the SBE did not act in an arbitrary and capricious manner, and did not abuse its discretion in approving Aspire's statewide charter petition. Judge Burr rejected CSBA's narrow interpretation of the statutory standards for approval of statewide charter schools, concluding that SBE's approval did not have to be predicated on a finding that the same program of education could not be provided through a series of locally-approved charters. CSBA has appealed to the First District Court of Appeals, and Aspire has filed its opposition, however the date for oral argument has not been set.

4. Proposition 39 Rights for Start-up Charter Schools: *New West Charter School v. Los Angeles Unified School District* (Los Angeles Case Number BS 115979)

New West Charter School is an SBE-approved charter school operating within the boundaries of the Los Angeles Unified School District ("LAUSD"). LAUSD made an offer of facilities to New West, which included classrooms at Fairfax High School, however, that offer was subsequently withdrawn and no other offer provided. New West retained MYM as co-counsel to bring an action for a writ of mandate against LAUSD. The Honorable James C. Chalfant found that LAUSD had violated procedural and substantive aspects of Proposition 39, and issued a writ of mandate directing LAUSD to immediately offer facilities commensurate with the standards set forth in Proposition 39. LAUSD then made a second offer of facilities to New West that did not comport with Proposition 39 standards in several aspects, including the fact that it was 7.5 miles away from the location requested by New West. New West returned to court and argued that LAUSD's second offer fell short of the obligations imposed on it by the court. Judge Chalfant agreed and awarded damages of $175,000, however he denied New West's request for attorneys' fees. New West has appealed to the Second District Court of Appeals on the grounds that the damage award was insufficient and that the denial of attorney's fees was improper. LAUSD has also appealed the portion of the judgment concerning the adequacy of their facilities offer.

5. Nonprofit Right's After Charter School Revocation: *Liberty Family Academy v. North Monterey County Unified School District*(Monterey Case Number M95610)

The Liberty Family Academy Charter School, a nonclassroom based school serving approximately 700 students, was operated by Liberty Family Academy, Inc. ("LFA"). The Charter School was revoked after six years, ending its operations at the close of the 2003-2004 school year. As per the charter, LFA, Inc. began the final closeout procedures for the Charter School. The District, recognizing that the Charter School left substantial assets, attempted to take over control of the closure process. MYM negotiated a resolution with the District's counsel

wherein it was agreed that a mutually acceptable accounting firm would close the books and a separate CPA firm would conduct the final audit. It was further agreed that the parties would cooperate in the process of final reconciliation of debts and assets and would abide by the findings contained in the final audit. The final audit revealed that the District had underfunded LFA Charter School over $1,000,000 in its final year of operation. Nonetheless, the District refused to pay the amounts owing to LFA, Inc., thus forcing LFA, Inc. to file suit against the District in Monterey County Superior Court. The District demurred on several grounds, including the contention that LFA, Inc. had no standing to bring suit because their authority to act ceased upon the revocation of the charter school. The court entertained lengthy oral argument and was provided with extensive authorities demonstrating the rights of nonprofit public benefit corporations to operate California nonprofit public charter schools, the obligations of nonprofits to conduct the closure of charter schools, as well as the terms of the charter and MOU which expressly state that the school will be run by a nonprofit that will retain the assets of the school following its closure, "regardless of the cause of closure." The Honorable Lydia M. Villarreal issued a two sentence ruling concluding that LFA, Inc. lacked standing to pursue litigation because its authority to act ceased upon the revocation of the charter. The court's ruling is inconsistent with the charter, the Charter Schools Act, and agreements of the parties. This poorly reasoned decision could have a negative impact upon school districts throughout the State of California. Ironically, Education Code Section 47604 was added by the Legislature for the express purpose of allowing the nonprofit to resolve the liabilities of the school after closure, thereby protecting local educational agencies from the debts and obligations of revoked or non-renewed charter schools. LFA, Inc. is appealing the trial court's decision.

6. Appeal Rights from Adverse SB 740 Audit: In the Matter of *Gorman Learning Center* (EAAP Case No. 07-05, OAH Case No. 2008050384)

The Gorman Learning Center ("GLC"), a nonclassroom based charter school, received a significant audit apportionment finding from MGT of America. MGT's audit claimed that GLC should be forced to return apportionment monies based upon allegedly inaccurate revenue and expenditure data used during the SB 740 funding process, as well as a failure to maintain proper pupil-teacher ratios. GLC, prior to its representation by MYM, filed an appeal with the Education Audit Appeals Panel ("EAAP") regarding both aspects of the adverse audit finding. MYM was successful in securing a stipulated dismissal of the adverse finding regarding GLC's SB 740 funding determinations. EAAP agreed with MYM in ruling that adverse audit findings on SB 740 funding determinations and the recalculations of any SB 740 funding awards are within the sole jurisdiction of the SBE, as only the SBE has the discretion to consider the entire operation of the Charter School and mitigating circumstances when making SB 740 funding determinations. While some errors may have been made in the revenue and expenditure calculations for SB 740, MGT had applied a strict percentage calculation to determine apportionment penalties. Upon reconsideration of the 2003-2004 SB 740 calculation, the SBE re-awarded GLC 100% funding. GLC is now in the process of re-submitting its 2004-2005 SB 740 application.

7. SBE Approval of Charter Schools on Appeal: *Rocklin Unified School District v. State Board of Education, Western Sierra Collegiate Academy as Intervener* (Sacramento Case No. 34-2009-80000220)

The Western Sierra Collegiate Academy ("WSCA") charter petition was approved by the SBE during its March 2009 meeting, after previously being denied by Rocklin Unified School District ("RUSD") and the Placer County Office of Education. WSCA will be operated by Rocklin Academy, which has already established the highest performing elementary schools in Placer County. RUSD filed a petition for writ of mandate seeking the issuance of a writ that would command SBE to nullify its approval of WSCA's charter. RUSD alleges that the SBE violated the Bagley-Keene Open Meeting laws, the SBE's bylaws, and Robert's Rules of Order during the process of approving WSCA. RUSD did not name WSCA in their petition. MYM obtained leave from the court for the intervention of WSCA, however the hearing on the merits of the case has not been set.

MYM is proud to be the foremost authority and leader in the establishment, enforcement and protection of charter school rights. MYM has specialized legal departments designed to fill all the needs of every charter school. Our attorneys have unparalleled experience in every aspect of charter school operation and litigation, and can handle the unique legal needs of charter schools throughout the State of California.

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

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