



LAW OFFICES OF SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP

**SMYM Assists in Defending SBE Prop. 39 Regulations from Court Challenge
by the Education Coalition**

In July the education coalition¹ filed a lawsuit challenging the State Board of Education's ("SBE") newly amended Proposition 39 implementing regulations. On Wednesday, November 24, 2008 the Honorable Timothy M. Frawley, judge of the Sacramento Superior Court, issued an 18 page ruling rejecting 95% of the education coalition's arguments. The Court only sided with the education coalition on one subpart of the regulations addressing facilities rights for conversion charter schools, discussed further below. Paul C. Minney, Esq. of Spector, Middleton, Young & Minney, LLP ("SMYM") represented the California Charter Schools Association ("CCSA"),² which successfully intervened in the matter to represent the interests of charter schools.

The education coalition challenged more than 12 sections of the newly revised Proposition 39 implementing regulations. Ultimately, the Court rejected the education coalition's arguments and ruled that almost all the new regulations were valid, including the provisions that allow for agreements between charter schools and school districts in lieu of Proposition 39 facility allocations, the revised definition of "contiguous" facilities, the obligation to provide a statement of reasons for noncontiguous facilities, the revised definition of "furnishings and equipment", the obligation to provide contiguous facilities to charter schools operating in grade level configurations different from the school district, the limitation on the oversight fee a school district can collect when it is also charging a pro rata share, the revised supporting documentation standard, the revised preliminary and final offer timelines, the obligation to provide a reciprocal hold-harmless clause in a facilities use agreement, and the obligation to provide facilities that comply with applicable building standards codes.

The only part of the Proposition 39 implementing regulations that the Court took issue with was the provision which prohibited a school district from moving a conversion charter school in subsequent school years absent a material modification of the charter. The Court stated that "although a conversion charter school necessarily is tied to the conversion school site during its first year of operation, nothing in the Charter Schools Act gives a conversion charter school an unqualified right to remain at the school site indefinitely."³ The Court focused on the language in Proposition 39 which states that a school district "... shall not move the charter school unnecessarily." Relying upon this language the Court stated that the SBE "cannot completely divest school districts of the power to move a charter school, as it did here." The Court also found that another separate subdivision of the regulations that required a school district to seek a waiver

¹ The Petitioners (referred to as the education coalition) included the California School Boards Association ("CSBA"), Education Legal Alliance ("ELA"), Association of California School Administrators ("ACSA"), and the California Association of School Business Officials ("CASBO").

² CCSA was also represented by Greg Moser with Procopio, Cory, Hargreaves & Savitch.

³ The court did distinguish between charter schools converted under the state's program improvement laws (e.g., IIUSP).

from the SBE prior to changing a conversion charter school's attendance area was without authority in the Charter Schools Act because "the concept of attendance areas is inapplicable to charter schools."

This matter will undoubtedly be appealed by the education coalition. The SBE and/or CCSA may also file a cross-appeal(s) to challenge the Court's ruling regarding conversion charter schools. A copy of the court's decision may found on our website by clicking the following link: [Court's Ruling After Hearing November 24, 2008](#)

Pending final resolution by the Court of Appeals and/or the California Supreme Court the SBE Proposition 39 implementing regulations remain controlling law (including the provisions regarding conversion schools).

If anything changes regarding the implementation of Proposition 39 and the implementing regulations SMYM will immediately notify you via Legal Alert.

We encourage you to contact our office if you have any questions regarding this Legal Alert, or if you would like assistance in understanding how Proposition 39 and this court ruling affect you. Please contact Paul Minney (pminney@smymlaw.com) or Sarah Kollman (skollman@smymlaw.com) at the Law Offices of Spector, Middleton, Young & Minney, LLP at (916) 646-1400.

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