



YOUNG, MINNEY & CORR, LLP

LEGAL ALERT

Critical Court Victory Preserves Cost Effective Access to Prop. 39 Facilities for Charter Schools

October 5, 2021

Proposition 39 (“Prop. 39”) was passed by California voters to ensure that all public school students, including those attending charter schools, share equally in district facilities. Every year, charter schools throughout California request public school facilities from school districts under Prop. 39; however, many of these schools are left in limbo, not knowing whether the districts will comply with the law by providing “reasonably equivalent” facilities at a properly calculated pro rata share charge. As a result, some charters have been forced into inadequate spaces or required to spend a disproportionate amount of their budgets on facilities.

On October 1, 2021, the First District Court of Appeal (the “Court”) issued a unanimous published decision in Clayton Valley Charter High School v. Mt. Diablo Unified School District (“CVCHS v. MDUSD”), Case Nos. A158195, A158202 that was a decisive victory for charter schools on the issue of how to properly calculate the pro rata share. The case involved the interpretation of California Code of Regulations, Title 5, (“5 CCR”) §11969.7, the regulation that defines which school district “facilities costs” may be included in the calculation of the pro rata share to be charged to a charter school. More specifically, CVCHS argued that in calculating the pro rata share, the District was required to exclude all categories of costs incurred by the District for facilities services that the charter school provides and pays for itself (e.g., ongoing operations and maintenance of the school site).

The Court of Appeal agreed with CVCHS on all fronts. The Court stated that in calculating facilities costs, the District could not include its costs of “plant maintenance and operations” paid for out of the unrestricted general fund (or out of restricted accounts such as the Ongoing and Major Maintenance Account) because CVCHS paid for its own ongoing operations and maintenance. The Court confirmed that Prop. 39 and the pro rata share is intended to be cost neutral to school districts, and reversed the judgment of the trial court, which had issued an unprecedented decision allowing the school district to include all of its facilities costs in the calculation of the pro rata share regardless of whether the charter school paid for and provided its own operations and maintenance services. As a result of this decision, a charter school cannot be charged twice for operations and maintenance services, and school districts cannot receive a windfall through the pro rata share.

The decision, which is controlling throughout the state, clarifies the right of a charter school to choose to perform its own operations and maintenance services and have these costs excluded from the pro rata share charged by the school district, or to contract with the district to provide operations and maintenance services and pay a pro rata share that will include the district's own costs of operations and maintenance services.

The Court's decision can be viewed in full [here](#).

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YMC was proud to represent CVCHS in this important case. Should you have any questions about this Legal Alert or the CVCHS v. MDUSD case, please contact Paul Minney (pminney@mycharterlaw.com), Kevin Troy (ktroy@mycharterlaw.com), or Kaela Haydu (khaydu@mycharterlaw.com).