

## Issue 11

July 1, 2014

Dear ,

Please find below the HK School Law Monthly Newsletter for July 2014. We appreciate your interest and look forward to hearing from you soon.

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## Quick Links



### [Litigation Update: Vergara v. California](#)

On June 10, 2014, Los Angeles County Superior Court Judge Rolf M. Treu struck down provisions of state law dealing with teacher tenure, dismissals, and layoffs. The case has been stayed pending appeal, but the ruling is significant inasmuch as it tests the foundations of teacher tenure rights in public schools in California. We will provide updates to this important ruling as the appeals process continues.

### [Litigation Update: American Indian Middle Schools v. Oakland Unified School District, et al.](#)

Controversy regarding [fiscal management issues at American Indian Model Schools](#) led to revocation of the school by the Oakland Unified School District. On June 23, 2014, California's First Appellate District published a slip opinion in the matter of [American Indian Model Schools v. Oakland Unified School District et al.](#) (A139652) granting American Indian Middle Schools request for a preliminary injunction against the Oakland Unified School District. The injunction means the revocation procedures have been stayed pending the outcome of the school's appeal of the revocation decision. This case touches on the significance of Ed. Code section 47607(c)(2), which states in part that an authorizing entity must consider "pupil academic achievement for all groups of pupils served by the charter school as the most important factor" when considering the renewal or revocation of a charter school. The court granted the injunction because it found that the record showed that the Oakland Unified School District failed to take pupil academic achievement into account as the most important factor when it revoked the school's charter. While far from dispositive at this stage of the proceedings, we will track this case and publish more details about this important matter in upcoming newsletters.

### [News Alert: Notice of Proposed Rulemaking to Revise the Definition of "Spouse" under FMLA](#)

In light of United States Supreme Court decision in *United States v. Windsor*, which found section 3 of the Defense of Marriage Act (DOMA) to be unconstitutional, the U.S. Department of Labor's Wage and Hour division announced a Notice of Proposed Rulemaking (NPRM) to revise the definition of spouse under the Family and Medical Leave Act of 1993. The NPRM proposes to amend the definition of spouse so that eligible employees in legal same-sex marriages will be able to take FMLA leave to care for their spouse or family member, regardless of where they live.

## THE APPLICATION OF FEDERAL CIVIL RIGHTS LAWS TO CHARTER SCHOOLS

## OVERVIEW

On May 14, 2014, the Department of Education's Office of Civil Rights (OCR) has issued a [Dear Colleague Letter](#) that clarifies the applicability of civil rights laws to charter schools.

This Dear Colleague Letter clarifies what had been an uncertain area of the law for charter schools. OCR stated that federal civil rights laws, regulations, and guidance apply to charter schools just as they apply to public schools.

As we are all well aware, charter schools are publicly funded independent schools established by school districts, individuals, or community organizations, operating under a charter with a local or national authority. Charter schools may adopt educational models and curricula not used by traditional public schools, providing parents and students with more educational choices. Although charter schools have the freedom to create diverse and innovative learning environments, OCR's recent guidance explains that charter schools must comply with the same federal civil rights laws governing public schools.

The new guidance highlights critical subjects that have arisen in charter schools, outlining, among others, four federal civil rights laws, including the schools' obligations to avoid discrimination in admissions practices and the administration of discipline; to provide a free appropriate public education for students with disabilities; and to take affirmative steps to assist English learners. While this is not an exhaustive list, it sets forth specific examples of some of the federal civil rights laws that now clearly apply to charter schools.

First, charter schools must provide equal opportunities in admissions for students and parents. This means that charter schools must use admission criteria that is both nondiscriminatory on its face and applied to applicants in a nondiscriminatory manner. Schools must also ensure that their admission criteria do not have the effect of excluding students on the basis of race, color, or national origin. Charter schools also may not discriminate on the basis of a student's disability. With regard to parents, charter schools must also ensure that parents whose primary language is not English, or parents with disabilities, have meaningful access to admissions information.

Second, charter schools must provide a free appropriate public education (FAPE) to students with disabilities, including an equal opportunity to participate in extracurricular services and activities. Schools may not ask students or parents to waive this right as a condition of attendance. These responsibilities are separate from charter schools' obligations under the Individuals with Disabilities Education Act (IDEA), and OCR intends to issue additional guidance regarding the rights of charter school students with disabilities under the IDEA.

Third, charter schools must take "affirmative steps" to support English-language learners. They must identify these students and provide them with effective language instruction.

Fourth, charter schools may not discriminate in the administration of discipline. This obligation applies to the entire disciplinary process, from classroom behavior management to referral and resolution. Charter schools must also ensure that they comply with applicable federal law when disciplining a student for misconduct related to the student's disability. Sponsors of AB 948 argue that the bill would allow charters to spend more money on educational programs rather than facilities costs.

## **WHAT YOU SHOULD DO**

OCR's most recent guidance is important because it clearly establishes that charter schools, although independent, are bound by the same federal civil rights laws as public schools. Charter schools should review their admissions policies, special education policies and procedures, English-language learner

policies and procedures and educational programs and disciplinary procedures to ensure that these policies and procedures comply with federal civil rights laws.

## QUESTIONS?

As always, if you have questions about this newsletter or any other matter, please contact us at any time for guidance.

Regards,

HK School Law

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