

HK School Law Monthly Newsletter



Greetings!

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IN THE NEWS



[U.S. Supreme Court Declines Review in School Bullying Case](#)

The U.S. Supreme Court on Monday declined to hear the appeal of three Pennsylvania families who alleged in a lawsuit that their school district failed to effectively respond to the bullying of middle school students.

[California Reins in "Willful Defiance" Discipline](#)

A new law passed in California makes it far less likely that students in that state will be suspended or expelled for "willful defiance." In legalese, the infraction involves having "disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties."

[The Supreme Court and School Cases: A Running Tally](#)

This interactive (and very unique) chart covers US Supreme Court cases with a K-12 school district or local school district as parties, by term and five-year periods, beginning with the term after *Brown v. Board of Education of Topeka* was decided in

1954. Roll over each grouped year to see key highlights of the Supreme Court's decisions.

LEGISLATIVE UPDATE

CURRENT LEGISLATION STATUS – IMPORTANT UPDATES

2014 was a busy year for charter school legislation! While we don't have room here to tally the large number of bills impacting charter schools (or bills that did not pass or were vetoed), two important bills deserve mention here.

[AB-948](#): The law, once enacted on January 1, 2015, will allow more charter schools to be able to apply for the SB 740 program which provides facility rent and lease cost reimbursement to schools serving some of the neediest student populations. The result is that AB 948 will allow schools to spend more money in the classroom and not on the classroom.

[AB-913](#): Governor Brown's veto message read: "Starting a charter school requires the strong commitment of dedicated individuals willing to serve on a governing board. While I support transparency, this bill goes further than simply addressing issues of potential conflicts of interest and goes too far in prescribing how these boards must operate."

AB 913 would have required the same conflict of interest requirements of charter schools as traditional school districts, dismissing the core premise of the California Charter Schools Act of 1992 which provides charter schools with more governance flexibility. AB 913 would have required charter schools to comply with open meeting requirements, the Public Records Act, the Political Reform Act, Government Code 1090 (with certain exceptions), and other provisions.

ED CODE PROVISIONS THAT APPLY TO CHARTERS BUT ARE NOT IN THE CHARTER SCHOOLS ACT

Many charter school administrators and school district personnel believe that charter schools are simply exempt from all provisions of the California Education Code due to the so-called "megawaiver" found in Ed. Code section 47610.

However, this belief is not entirely accurate. The legislator sometimes intends that a specific provision of the Ed. Code apply to charter schools, and thus there are numerous Ed. Code sections that do apply to charter schools. The following examples are not exhaustive but merely representative. If you have a question about whether

the Ed. Code applies to a charter school, we recommend contacting your attorney to verify.

Education Code section 48000

Section 48000 describes the “Transitional Kindergarten” program that is optional for charter schools. As a condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to Ed. Code section 46300, a charter school must ensure (among other things) that:

- (1) In the 2012–13 school year, a child who will have his or her fifth birthday between November 2 and December 2 shall be admitted to a transitional kindergarten program maintained by the school district.
- (2) In the 2013–14 school year, a child who will have his or her fifth birthday between October 2 and December 2 shall be admitted to a transitional kindergarten program maintained by the school district.
- (3) In the 2014–15 school year and each school year thereafter, a child who will have his or her fifth birthday between September 2 and December 2 shall be admitted to a transitional kindergarten program maintained by the school district.

Further, charter schools receiving an apportionment for a transitional kindergarten program must ensure that teachers in the program meet the following additional requirements:

- (1) At least 24 units in early childhood education, or childhood development, or both.
- (2) As determined by the local educational agency employing the teacher, professional experience in a classroom setting with preschool age children that is comparable to the 24 units of education described in paragraph (1).
- (3) A child development teacher permit issued by the Commission on Teacher Credentialing.

Education Code section 48850

The California legislature has mandated that charter schools must accommodate all pupils in foster care and those who are homeless, as defined by the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The specific definition of “homeless child or youth” and “homeless children and youths” can be found in 42 U.S.C. Sec. 11434a(2). Thus, pursuant to the federal McKinney-Vento Homeless Assistance Act, charter schools must “immediately enroll” a homeless child

or youth seeking enrollment except where the enrollment would be in conflict with Ed. Code section Section 47605(d).

Education Code section 48907 and 48950

Section 48907 states that all pupils of California public schools, including charter schools, “shall have the right to exercise freedom of speech and of the press.” This mandate extends at least to the use of bulletin boards, the distribution of printed materials or petitions, the wearing of buttons, badges, and other insignia, and the right of expression in official publications, whether or not the publications or other means of expression are supported financially by the school or by use of school facilities, except that expression shall be prohibited which is obscene, libelous, or slanderous or that incites pupils so as to create a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school.

Section 48907 also requires the governing board or body of a charter school to adopt “rules and regulations in the form of a written publications code” to set forth reasonable provisions for the time, place, and manner of conducting such free speech activities within the jurisdiction of the charter school.

Education Code section 48950 extends similar free speech protections to high school students where the speech occurs outside of the school’s campus.

Education Code sections 49010-49013

We have written extensively about these sections elsewhere. [Please see our archives.](#)

Effective January 1, 2013, AB 1575 added Ed. Code sections 49010, 49011, 49012 and 49013, as well as amended Government Code section 905. Section 49010 establishes a statutory framework governing the scope and nature of the free school guarantee in California's K-12 public schools, principles largely derived from the California Supreme Court's decision in *Hartzell v. Connell* (1984) 35 Cal.3d 899.

Section 49010 defines "educational activity," for which no pupil fees may be charged. This section defines a "pupil fee" as any fee, deposit or other charge that a pupil or a pupil's parent or guardian are required to pay in violation of new Ed. Code section 49011 and article IX, section 5 of the California Constitution.

Those laws require K-12 public schools to offer educational activities to students and their families free of charge, and under such laws a "fee waiver" is NOT an acceptable means to avoid the restrictions of the new law.

Education Code section 49414.7

Section 49414.7 provides an exception to the restrictions found in sections 2052 and 2732 of the Business and Professions Code. Pursuant to section 49414.7, a charter school, in the absence of a credentialed school nurse or other licensed nurse onsite at the charter school, may elect to participate in a program to allow nonmedical employees to volunteer to provide medical assistance to pupils with epilepsy suffering from seizures, upon request by a parent or guardian.

Education Code section 49475

Section 49475 mandates that, if a charter school offers an athletic program, then any athlete who is suspected of sustaining a concussion or head injury in an athletic activity must be immediately removed from the athletic activity for the remainder of the day, and must not be permitted to return to the athletic activity until he or she is evaluated by a licensed health care provider who is trained in the management of concussions and is acting within the scope of his or her practice.

Education Code section 52055.57

Section 52055.57 applies the provisions of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) to all local educational agencies, including charter schools, that receive funds pursuant to the No Child Left Behind Act.

Education Code section 313

Similar to Section 52055.57, section 313 mandates that charter schools with one or more pupils who are English learners, and, to the extent required by federal law, must assess the English language development of each pupil in order to determine the level of proficiency.

Education Code section 35330

Section 35330 extends to limitations of liability for field trips and school excursions that school districts enjoy to charter schools. Pursuant to Section 35330, charter schools may conduct field trips or excursions in connection with courses of instruction or school-related social, educational, cultural, athletic, or school band activities to and from places in the state, any other state, the District of Columbia, or a foreign country for pupils enrolled in elementary or secondary schools. Furthermore, Section 35330 waives all claims by persons making the field trip or excursion against the charter school for injury, accident, illness, or death occurring during or by reason of the field trip or excursion. To effectuate this waiver for out-of-state excursions, all adults

taking out-of-state field trips or excursions and all parents or guardians of pupils taking out-of-state field trips or excursions shall sign a statement waiving all claims.

WHAT YOU SHOULD DO

The good news is there is nothing you need to right now about this information!

At the close of the year, our message to you now is to simply enjoy the Holiday season! We wish you and your entire charter school family all the best and look forward to a prosperous 2015!

QUESTIONS?

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

Hansberger & Klein, LLP is a law firm representing public charter schools. This newsletter is not intended to be legal advice. If you are seeking legal advice, please contact us or your attorney for guidance. We look forward to working with you!