

# HK School Law Monthly Newsletter



Greetings!  
Thank you for your interest in the HK School Law Monthly Newsletter.  
We look forward to hearing from you soon!

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May 2015 | Issue 21

## QUICK LINKS

### **We're growing! Visit us at our newest location!**

In addition to our Lake Arrowhead offices, we're pleased to announce a second office location in Upland, California. Our second office will be located at: 1425 W. Foothill Blvd., Suite 100, Upland, CA 91786. Our office phone numbers remain the same. Toll Free: 1-800-577-0663. Direct: 909-744-8775.

Please continue to address all correspondence to our secure PO Box at PO Box 1352, Blue Jay, CA 92317-1352.

### **[California State Appellate Court Upholds Public School Yoga Program](#)**

A California school district's use of yoga in its physical education classes does not impermissibly advance religion, despite yoga's roots in Hinduism, a state appellate court has ruled.

A three-judge panel of California's 4th District Court of Appeal, based in San Diego, ruled unanimously on April 3 that the yoga program of the 6,500-student Encinitas Union School District does not violate the state constitution's prohibition against government establishment of religion.

### **Special Education Training – Book Today**

Does your staff need training on state and federal special education and disability laws?

HK School Law is currently booking trainings for the 2015-2016 school year. We've trained hundreds of board members and school employees on critical, need-to-know information related to special education. If you want to make sure your employees are adhering to the mandates of the IDEIA and Section 504, we can help. Call or email us today if you are interested in setting up a training at your school this coming year!

### **Online Training Opportunities – [www.schoollawtraining.com](http://www.schoollawtraining.com)**

Does your board need Brown Act training to ensure legal compliance and strengthen their operational abilities? At [www.schoollawtraining.com](http://www.schoollawtraining.com), your board members can get in on free Brown Act training. Find out more today by visiting the site!

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## NEWSLETTER

### **UNIONS: KNOW YOUR RIGHTS, KNOW YOUR OBLIGATIONS**

Charter schools in California are largely non-union. Current research indicates that only 40 charter schools in California have unionized thus far. Twenty are part of the Green Dot chain and are affiliated with the NEA's state-level California Teachers Association. Six are conversion charter schools, where teachers petitioned to become an independent charter school and remain in their local union, United Teachers Los Angeles. UTLA has unionized nine charter schools in total. Most recently, UTLA has announced the unionization of the Alliance network of schools in the Los Angeles area, and teachers at the Port of Los Angeles High School have also announced a successful union drive with UTLA. The remaining twenty-one charter schools are organized by other local affiliates of the AFT or NEA.

Thus, charter schools are generally unfamiliar with unions and the unionization process. That is no longer an option for charter schools, however, as the California Teachers Association officially listed charter school organizing as a focus area in its long-term strategic plan in January 2015. This new focus should not come as a surprise given that the National Alliance for Public Charter Schools has indicated there 6,000 charter schools nationwide. Charter schools are no longer a small shadow on the horizon. As a result, union efforts to organize charter schools are expected to increase. Education Week tracks this issue frequently.

Interestingly, however, recent research has shown that, nationally, the percentage of unionized charter schools has actually dropped from 12 percent in 2009 to 7 percent in 2012, according to an annual survey by the Center for Education Reform, a Washington-based research and advocacy group. Union groups have changed their strategy as a result, with a renewed focus on parent involvement and, in some cases, winning over at least 90 percent of the teachers prior to unionizing. These types of strategies may result in longer term success for union organizers.

Much remains to be seen, but our focus in this newsletter is to provide a brief review of charter schools' rights and responsibilities when faced with organizing efforts and to remind our readers of some resources that might prove helpful.

Many charter school administrators and board members ask us if they can talk openly about how to avoid unionization. The answer, of course, is yes. What charter school administrators and board members may not do, however, is prevent unionization by illegal means.

Creating a workplace environment in which employees feel engaged and valued and thus are unlikely to unionize is a difficult management task and beyond the scope of this newsletter. What we can provide guidance on is how to educate employees in a lawful manner regarding the realities of unionization.

The Education Employment Relations Act ("EERA")

In 1976, California adopted the EERA, which establishes employees' rights to support or refrain from supporting unionization. Under the EERA (and appropriate regulations of the PERB, or Public Employment Relations Board), employees who want to organize must obtain written statements of support from other employees. These written statements are generally referred to as "union authorization cards."

In a union authorization card, employees designate a specific labor union to be their representative for collective bargaining purposes and sign their names to the cards. The number of signed cards that must be obtained depends on the total number of employees in the bargaining unit. (For purposes of this newsletter, teachers form a bargaining unit.) Many times, this process of collecting cards will happen in secret. Other times, employees may openly express their desire to organize. Regardless, it is important that charter school employers understand that the law does not prevent them from educating their employees about union representation, provided that state funds or state facilities are not used.

### About State Funds

This is a complex topic, but we can make it clear that state law (and numerous court decisions) make it clear that "[a] public employer receiving state funds shall not use any of those funds to assist, promote or deter union organizing" and that "any public official who knowingly" does so will be liable to the state for the amount of such funds (Cal. Gov't. Code §16645.6). Again, there is no prohibition against an employer educating employees about the undesirable aspects of unionization for employees themselves and its impact on a charter school's mission. Just don't use any state funds to do it.

### PERB

Historically, organizers of a union could ask a charter school employer to voluntarily recognize the bargaining unit, and many unions will take this route if they obtain more than a majority or cards from employees.

If the charter school employer declines voluntary recognition, the union may file a petition with the PERB requesting a "certification" of bargaining unit representation through an election where employees decide whether or not they want union representation. To request such a certification, the union organizers must collect cards from at least 30 percent of the employees. PERB then conducts an investigation to determine whether the request is sufficiently supported and whether the showing of interest "raises a question of representation in the appropriate bargaining unit." That last requirement is somewhat technical, but suffice it to say that if PERB determines that the petition for certification raises a question of representation, it will schedule an investigatory hearing to determine whether an election should be held to allow the employees to vote on whether or not they want to be represented by the union. PERB elections are held by secret ballot and require a "50% plus one" vote to mandate that the collective bargaining unit become the official representative of the represented employees.

However, it is important to note that in 2004, the laws governing voluntary recognition changed. Now, if the bargaining unit can a) provide proof of majority support by the employees, b) provide clarity as to the bargaining unit to be represented, and c) demonstrate that no other union has come forward to intervene with the support of 30% of the affected employees, then the employer is now required to voluntarily recognize the bargaining unit. No vote, no PERB, and no choice on the part of the employer.

### The Devil is in the Details

If you are faced with a response to an organizing effort or suspect organizing efforts are underway, it is important to know your rights and responsibilities as an employer. There is much more to the story than we could tell here, and we highly recommend that you meet

with your legal counsel immediately under such circumstances.

As we have already noted, the more complex issue is building a work culture that naturally deters unionization. Labor organizers have an easy time convincing disgruntled employees who have a valid reason to be disgruntled. When employees are treated with respect and dignity, are rewarded with autonomy and adequate compensation and can meaningfully participate in the mission and vision of the school, union efforts are much more unlikely to succeed...or even begin.

### **WHAT YOU NEED TO DO**

CCSA has published a helpful employer's checklist to understanding unions. You can review it [here](#).

In general, however, the information we have provided in this newsletter might generate some ideas that could be put into practice at your school today. We encourage you to review any new policies or procedures with legal counsel and, as always, to keep your employees and students as the most important focus of all your work.

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*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!*