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LEGAL UPDATE

October 31, 2017

To: Superintendents, Member School Districts (K-12)
From: Jennifer E. Nix *JEN*
Assistant General Counsel
Subject: Changes to Law Regarding Charter School Admissions,
Suspensions, and Expulsions
Memo No. 36-2017

On October 13, 2017, Governor Brown signed into law Assembly Bill 1360, which amended sections 47605 and 47605.5 of the Education Code to add additional requirements of charter schools in the areas of admission, suspension, and expulsion.

Suspension and Expulsion Procedures

First, the law now requires a charter petition to contain a comprehensive description of procedures by which a student can be suspended, expelled, or otherwise involuntarily removed from the charter school, including an explanation of how the charter school will comply with California constitutional due process requirements.¹ A charter school’s suspension and expulsion procedures must comply with the following minimum procedures:

- For suspensions of fewer than ten days, provide oral or written notice of the charges against a student and, if the student denies the charges, an explanation of the evidence that supports the charges and an opportunity for the student to present his/her “side of the story.”
- For expulsions or suspensions of ten days or more: (1) Provide “timely” written notice of the charges against the student and an explanation of the student’s basic rights; and (2) Within a “reasonable number of days,” provide a hearing adjudicated by a neutral hearing officer at which the student has a fair opportunity to present testimony, evidence, and

¹ Education Code §§ 47605(b)(5)(J), 47605.5(b)(5)(J).



witnesses; is permitted to confront and cross-examine adverse witnesses; and has the right to bring legal counsel or an advocate.

- Contain a clear statement that no student shall be involuntarily removed by the charter school for any reason unless the student’s parent/guardian has been provided with written notice of the intent to remove the student at least five schooldays before the effective date of the removal. The written notice must be in the native language of the student, parent/guardian, and/or educational rights holder if the student is a foster or homeless youth. The written notice must inform the student of the right to initiate the hearing procedures described above before the effective date of the removal. If the parent/guardian initiates hearing procedures, the student is entitled to remain enrolled in the charter school through the duration of the hearing, and cannot be removed until the charter school issues a final hearing decision. “Involuntarily removed” is defined as “disenrolled, dismissed, transferred, or terminated,” but does not include suspensions of any length of time.²

The amended law does not specify any timelines for the required due process procedures, instead relying on the terms “timely” and “reasonable.” Authorizers will want to review charter petitions to ensure established timelines are timely and/or reasonable as required by law.

The bill requires the district of residence of a student who is expelled from or leaves a charter school without graduating or completing the school year for any reason, and who subsequently is expelled or leaves the district of residence without graduating or completing the school year for any reason, to provide that information to the charter school in which the student previously was enrolled.³

Admission Policies and Procedures and Lottery Preferences

Second, the law clarifies that a charter petition must contain a description of the charter school’s admissions procedures and policies.⁴ Additionally, it amends the law regarding public random drawings, or lotteries, for charter schools with more students who wish to attend a charter school that exceeds capacity. The bill removes the language permitting a charter school to put into place other preferences “only if consistent with the law,” and instead permits preferences including, but not limited to, siblings of students admitted to or attending the charter school and children of the charter school’s teachers, staff, and founders identified in the initial charter.⁵ The law now indicates that any priority order for any preference, including those required by law, must be determined in the charter petition, and must:

- Be approved by the authorizing governing board at a public hearing;
- Be consistent with federal law, the California Constitution, and Section 200 of the Education Code; and

² *Id.*

³ Education Code §§ 47605(d)(3), 47605.5(e)(3).

⁴ Education Code §§ 47605(b)(5)(H), 47605.5(b)(5)(M).

⁵ Education Code §§ 47605(d)(2)(B), 47605.5(e)(2)(B).



- Shall not result in limiting enrollment access for pupils with disabilities, academically low-achieving pupils, English learners, neglected or delinquent pupils, homeless pupils, or pupils who are economically disadvantaged, as determined by eligibility for any free or reduced-price meal program, foster youth, or pupils based on nationality, race, ethnicity, or sexual orientation.⁶

Finally, the law now explicitly states that preferences cannot require mandatory parental volunteer hours as criteria for admission or continued enrollment.⁷

Prohibition on Requiring Parental Involvement

The bill codifies the prohibition on requiring parental involvement as a condition of admission or enrollment in a charter school, and requires charter schools to affirmatively notify parents of the same:

A charter school may encourage parental involvement, but shall notify the parents and guardians of applicant pupils and currently enrolled pupils that parental involvement is not a requirement for acceptance to, or continued enrollment at, the charter school.⁸

Next Steps

Authorizers should expect current charter schools to seek amendment of their current approved charter to address the changes detailed in this Legal Update prior to the application cycle for the 2018-2019 school year if the charter school's current petition does not already cover those items. These amendments would be considered "material," and must be approved by the authorizer's governing board, subject to the standards and criteria contained in section 47607 of the Education Code.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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⁶ *Id.*

⁷ *Id.*

⁸ Education Code §§ 47605(n), 47605.5(n).