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Education Law



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THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

AUGUST 2017



Studying Legal Issues Related to Education

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Rule the School: Practice Tips in Representing Nevada Charter Schools

By Mark Gardberg, Esq.

The charter school world could use some good P.R. Across the country, regulators have disclosed one investigation after the next, for everything from financial irregularities to grade manipulation to sexual harassment to failing academic results. Comedian John Oliver recently spent 20 minutes mocking Ohio charter schools, only to end with the unfortunate remark: “[B]e glad [Ohio,] you have Nevada, so you are not the worst . . .”

The reality is *not* so dire. Nevada charter schools are strong and growing stronger. The Silver State has many five-star ranked charters like the Oasis Academy, Nevada State High School, and two Coral Academies of Science. Nevada charters have earned one accolade after another, including “Quality School” and “Reward School” designations. Meanwhile, new, topnotch operators strengthen the sector each year, such as the Legacy Traditional School opening later this month.

Nevada charter schools can, in fact, compete with any institution, private or public. If, for example, your daughter wanted to attend one of *The Washington Post*’s 401 “Most Challenging High Schools” in the country, her first two options would be private schools charging over \$20,000 a year. Nevada’s third and sixth options—Coral Academy of Science in Reno and Las Vegas, respectively—are charter schools that will not cost her a penny.

Representing a charter school—even a top-performing one—has its challenges.

Swiss army knife

Representing a charter school—even a top-performing one—has its challenges. A charter school lawyer is less like a steak knife, and more like a Swiss army knife. You must be able to quickly and competently navigate multiple areas of law, switching from regulatory issues to labor laws

to transactional to litigation matters, often all in one conversation. Below are some of the more common issues you might encounter as charter counsel, with practice tips sprinkled in to help you drive your client’s interests forward.

Regulatory and legal compliance

A charter school’s foundational document is its charter contract with a sponsoring authority, which is usually the State Public Charter School Authority (“SPCSA”), for normal and high-achieving schools, and Achievement School District (“ASD”), for underperforming schools. (See AB 448 (2015).) To obtain a charter, your client must submit a lengthy application to its sponsor, kicking off a process spanning six months to a year.

Practice Tip: Be careful when using a prior school’s application as a guidepost in preparing your own. The application process changed substantially after the 2015 Legislative Session. For current information, see the SPCSA’s and ASD’s very helpful websites at <http://charterschools.nv.gov/> and <http://www.doe.nv.gov/ASD/>, respectively.

Once your client's school opens, the degree of difficulty only increases. As counsel, you must oversee compliance not just with the school's charter, but also, for example:

- The two Charter School Acts (NRS Chap. 388A and 388B);
- Laws governing teachers, staff, and pupils (NRS Chap. 391 and 392);
- Local government public-procurement laws (NRS Chap. 332.039 *et seq.*);
- Open Meeting laws (governing the school's board meetings in particular) (NRS Chap. 241);
- The Public Records Act (as to school records) (NRS Chap. 239); and
- Federal disability laws, including the ADA and Rehabilitation Act.

Practice Tip: One hot-button compliance issue concerns for-profit, educational management organizations ("EMOs"). Those are usually regional or national companies managing charters across state lines. By law, the SPCSA

Like any business or institution, a Nevada charter school, no matter how well operated, will encounter disputes.

must review the EMO/charter school relationship, with special focus given to how funds will flow among them. (NRS 388A.246; 388A.393.) Unfortunately, given the broad EMO definition in NRS 388A.030, some have argued that virtually every school vendor—from true EMO to back-office provider to mere cleaning/janitorial contractor—may qualify. I suggest contacting your client's

sponsor to discuss which relationships will require EMO qualification.

Employment / labor law

Another common source of charter school legal questions concerns employment and labor laws. Be prepared, as counsel, to: (i) advise on teacher licensing; (ii) draft employment offers and contracts; (iii) conduct new-hire trainings (e.g., on sexual harassment and child abuse reporting); (iv) draft personnel handbooks; (v) address public retirement ("PERS") questions; and (vi) respond to the inevitable question, "How do I fire John Q. Teacher?"

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Litigation and dispute-resolution

As the joyful litigators among us will confirm, we live in a litigious society. Like any business or institution, a Nevada charter school, no matter how well operated, will encounter disputes. Ripe areas for litigation include: (i) tort claims (e.g. slip and falls); (ii) wrongful discharge claims; (iii) breach-of-contract claims (e.g., disputes by or against vendors); and (iv) family-law matters (e.g., the school's handling of child-custody orders and protections).

Practice Tip: One unexpectedly complicated area involves student expulsions and long-term suspensions. As counsel, you will have to marshal a variety of statutes governing when the school board hears the matter, what type of notices and service are required, the fact that the Open Meeting Law does not apply (i.e., the hearing is closed), whether the student can be represented by counsel and present evidence, and so forth. (See, e.g., NRS 241.033-034, 388A.495, and 392.466-467). There is also extensive case law regarding related issues like reasonable suspicion, search and seizure, and substantive and procedural due process.

Practice Tip: An initial, but often overlooked, question in any charter school litigation is whether the school enjoys sovereign immunity. Charter schools and their employees are generally immune under NRS 41.0305 and 41.0307. For negligence and other tort claims, however, the state has

waived immunity. The same is true for ministerial actions (e.g., driving a school bus), but the state has retained the immunity for discretionary actions (e.g., determining which students to bus). See *Martinez v. Maruszczak*, 123 Nev. 433, 437, 168 P.3d 720, 723 (Nev. 2007); *City of Boulder City v. Boulder Excavating, Inc.*, 124 Nev. 749, 756, 191 P.3d 1175, 1179 (Nev. 2008).

Transactional work

Last but not least, a charter school lawyer must wear a transactional attorney's hat. Your client will contract with vendors on everything from computers, books, and other fixed assets, to special education, counseling, P.R., and other services, to accounting, enrollment, and academic software. Moreover, your client will lease or buy real property, and may also construct a new school building on that land. The charter school may need to sell tax-exempt bonds pursuant to NRS 388A.550 *et seq.* to finance those capital projects.

Practice Tip: Whether a charter school leases or owns its campus, it is immune from paying real property taxes. (NRS 361.065.) What some schools do not realize, however, is that the statutes have deadlines for when applications must be submitted. (NRS 361.155.) If the school misses a deadline, it is likely to receive the exemption on appeal, but it may take weeks or months to sort out and greatly increase its legal fees and costs. **E**



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