

CLIENT NEWS BRIEF

State Board of Education Adopts Waiver Policy for Unlawfully Located Nonclassroom-based Charter Schools

The State Board of Education (State Board) recently approved Policy No. 17-01 (Policy), which permits the board to issue temporary waivers to nonclassroom-based charter schools operating “resource centers” outside the geographical boundaries of their chartering school district. The State Board’s decision comes on the heels of a closely watched charter school decision, *Anderson Union High School District v. Shasta Secondary Home School* (2016) 4 Cal.App.5th 262 (*Anderson*), which became binding law in California on January 18, 2017 ([see 2017 Client News Brief No. 5](#)). The holding in *Anderson* confirmed that the geographic and site limitations of the Act are applicable to all charter schools, including nonclassroom-based programs.

The *Anderson* decision left some nonclassroom-based charter schools scrambling to bring facilities operating outside the boundaries of their authorizing school district into compliance with the law. In order to minimize disruption to pupils and educational programs, the Policy sets forth a process to determine whether charter schools will be granted a one-year waiver from compliance with the geographic restrictions of the law. All schools granted a waiver must become fully compliant no later than June 30, 2018.

Charter schools themselves may not apply directly for waivers with the State Board. The authorizing school district must seek the waiver on the charter school’s behalf. The charter school will be required to create a transition plan detailing how its resource center will come into compliance with *Anderson*, and submit a copy of the plan to the State Board and all impacted school districts where the noncompliant facilities are located. A charter school must also give parents regular status updates regarding transition. The Policy is set to expire on November 10, 2017, although the State Board did not preclude review of subsequent waiver requests on a case-by-case basis.

The State Board emphasized that the Policy should not be viewed as an amnesty for charter schools operating noncompliant facilities. Rather, all noncompliant schools must take immediate steps to comply with the law as clarified by *Anderson*. We encourage school districts and county offices of education impacted by this Policy to work closely with legal counsel to evaluate potential solutions, including providing feedback on individual waivers that come before the State Board. Over 40 waivers are slated for review at the May 2017 State Board meeting, with more anticipated at future meetings.

For more information on State Board of Education Policy No. 17-01, the *Anderson* opinion or the Charter Schools Act, please contact the authors of this Client News Brief or an attorney in Lozano Smith’s [Charter School Practice Group](#) or at one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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