

Memorandum 2009-52

**Application of Government Claims Act to Charter Schools
(Scope of Study)**

The Legislature has authorized the Commission to study the “legal and policy implications of treating a charter school as a public entity for the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code” (“Government Claims Act”). 2009 Cal. Stat. res. ch. 98 (ACR 49 (Evans)). No deadline has been given. This memorandum introduces the topic.

The issue of whether to treat charter schools as a public entity for purposes of the Government Claims Act has come up recently in the legislature but a definitive decision was not made. See, e.g., AB 1868 (Walters), as amended in Senate, July 2, 2008. That bill and this study were prompted by a recent appellate decision holding that a charter school is not a public entity for purposes of the Government Claims Act. See *Knapp v. Palisades Charter High School*, 146 Cal. App. 4th 708, 53 Cal. Rptr. 3d 182 (2007).

The issue is complicated. The Government Claims Act has many elements implicating different policy considerations. Charter schools have characteristics of both public and private entities. They receive public funding, yet are freed from most of the regulations that traditional public schools must follow. Charter schools also have a great deal of freedom in selecting an organizational model, which can give rise to different degrees of independence from the state. Because of that complexity, it is necessary for the Commission to consider the nature of the Government Claims Act and the Charter Schools Act in detail.

This memo will provide the Commission with a general overview of those bodies of law to introduce the Commission to the topic. The memo then concludes with a proposed methodology for how to move through the material in an organized manner.

OVERVIEW OF CHARTER SCHOOLS ACT

The Charter Schools Act of 1992 gives charter schools considerable independence from the laws that govern public schools. Educ. Code § 47600 et seq.; 1992 Cal. stat. ch. 781. At the same time, a charter school is considered a public school for purposes of the California Constitution and public school funding. Cal. Const. art. IX; Educ. Code § 47615. All statutory references in this overview of the Charter Schools Act are to the Education Code unless otherwise indicated.

The purpose of the Charter Schools Act is to allow community members to create schools that are free from most of the requirements that apply to a traditional public school. These schools may serve students between kindergarten and twelfth grade. In exchange, a charter school must show measureable academic results. Section 47610. The legislature hopes that allowing charter schools will:

- Improve student learning.
- Increase learning opportunities for students, particularly those identified as academically low achieving.
- Encourage innovation in teaching methods.
- Create new professional opportunities for teachers.
- Provide families with greater choice of educational opportunity within the public school system.
- Make charter schools accountable under performance-based accountability systems.
- Create new competition with traditional public schools to promote improvements in all public schools.

Section 47601.

The most significant features of the Charter Schools Act are summarized below. This summary is intended to provide a basis for discussion of the implications of treating a charter school as a “public entity” for the purposes of the Government Claims Act.

Creation, Revocation, and Renewal of Charter School

A charter school may be created as a completely new school (“start up”) or be converted from an existing public school (“conversion”). Sections 47605(a)(1)(A)-(B), 47606. Private schools may not convert under the Charter Schools Act. Section 47602(b).

Creation of Charter School

Whether a charter school is a start up or a conversion, the process begins with a petition. For a start-up charter school, parents or guardians of at least 50 percent of the students expected to enroll must sign the petition. At least 50 percent of the teachers expected to be employed must also sign the petition. Section 47605(a)(1)(B).

For a conversion school, at least 50 percent of the permanent teachers at the school must sign the petition. Section 47605(a)(2).

Additionally, a school district may convert all of its schools to charter schools if at least 50 percent of the teachers in the district sign the petition and the State Board of Education and the State Superintendent of Public Instruction approve the petition. Section 47606.

Once the petitioner obtains the requisite number of signatures, the petitioner needs to submit the petition and a copy of the proposed charter to the entity that will authorize the charter (“chartering entity”). Section 47605(a)(2)-(3). Usually, the chartering entity is the school district in which the charter school will be located, but in some cases, the chartering entity may be the county board of education or the State Board of Education. Sections 47605(a)(6), (b), (i); 47605.6, 47605.8.

A charter that meets the requirements set forth in the Charter Schools Act is presumed to receive approval. A chartering entity may deny a charter only if it provides a written finding of facts that support the denial. Section 47605(b)(1)-(5).

Requirements for Creation of School Charter Petition

A petition for a charter school that is submitted to a school district as the chartering entity must address the following 16 items:

- Description of the educational program.
- Outcomes the school will measure.
- Methods used to measure student outcomes.
- Governance structure of the school, including the mechanism for parental involvement.
- Qualification requirements for school employees.
- Procedures to ensure the health and safety of students and staff.
- Means used to attain a racial and ethnic balance among students that reflects the general population within the chartering district.
- Requirements for admission, if any.

- How annual and independent financial audits will be conducted, and how audit exceptions and deficiencies will be resolved.
- Procedures for suspending or expelling students.
- How staff will be covered by the State Teachers' Retirement System, Public Employees' Retirement System, or federal Social Security.
- Public school alternatives for potential students.
- Description of the rights an employee has to leave a school district to work for a charter school or to return to the school district.
- Procedure for resolving disputes between the charter school and its chartering entity.
- Declaration of whether the charter school will be considered the exclusive public school employer for purposes of the Educational Employment Relations Act.
- Procedures for closing the school.

Section 47605(b)(5)(A)-(P).

Petitions submitted directly to a county board of education or the State Board of Education have similar requirements. Sections 47605.5, 47605.8.

Other Requirements for Creation of Charter School

In addition to the 16 elements required in the petition, petitioners must be prepared to give the chartering entity information about the proposed operation and potential effects of the school. This information includes:

- Description of the charter school facilities.
- How administrative services will be provided.
- Potential civil liability effects on the school and the school district.

Sections 47605(g), 47605.6(h).

Petitioners must also provide a proposed operational budget for the first year that includes start up costs, and cash flow and financial projects for the first three years. Sections 47605(d), (g).

Admissions and Program Restrictions on Charter School

A charter school must follow many of the same admissions and program requirements as a traditional public school. A charter school:

- Cannot charge tuition.
- Must have nonsectarian programs, admission policies, and employment practices.

- Must not discriminate.
- Must meet statewide academic standards.
- Must conduct mandatory student testing.

Sections 47605(c)(1), (d)(1).

Renewal of Charter

Initially, a charter may be granted for up to five years. After the initial grant, the school's charter may be renewed for five years at a time. Section 47607.

Revocation of Charter

The chartering entity may revoke a charter if there is substantial evidence that the school materially violated the charter, failed to meet student outcomes, failed to follow generally accepted accounting principles, engaged in fiscal mismanagement, or violated the law. Before a charter can be revoked, a charter school must receive notice of the violation, have an opportunity to remedy the violation, and have an opportunity to appear at a public hearing. Sections 47605(b), 47607(c).

Operation of Charter School

The Charter Schools Act does not require a particular governance structure. It requires a school's charter to describe the proposed governance structure and the means for parental participation. Sections 47605(b)(5)(D), 47605.6(b)(5)(E). As a result, charter schools adopt a variety of governance structures.

Some authorities distinguish between two broad classes of charter schools based on their organizational structure: "dependent" and "independent." "Dependent" charter schools are more fully integrated with the school district. A dependent charter school tends to rely heavily on the district for funding and services. As such, the district is more likely to exert considerable influence over budget and staffing decisions, and the school is more likely to operate like an arm of the chartering entity.

By contrast, "independent" charter schools tend to be more fiscally autonomous and may receive funding directly from the county board of education or the state. As such, the district is less likely to exert control over budget and staffing decisions. See D. Chau, G. Daley, and B. Gill, *Authorization, Governance, and Oversight of Charter Schools* in CHARTER SCHOOL OPERATIONS AND PERFORMANCE: EVIDENCE FROM CALIFORNIA at 72 (2003).

Operation by Non-Profit Public Benefit Corporation

The Charter Schools Act explicitly allows a charter school to operate as a non-profit public benefit corporation. An incorporated charter school must meet the requirements of both the Corporations Code and the Education Code. Section 47604(a); Corp. Code § 5110 *et seq.*

The chartering entity of an incorporated charter school is not liable for any of the debts or obligations of the charter school, as long as the chartering entity fulfills its oversight role. Section 47604(c).

An incorporated charter school may allow paid staff to serve on its governing board as long as no more than 49 percent of the board members are interested parties. Corp. Code § 5227. A charter school organized as a corporation must also allow at least one person on its board to be chosen by the school district that granted the charter. Section 47604(b).

Role of Chartering Entity

The entity that authorizes a charter school is responsible for oversight of the school. Usually this is the school district in which the charter school operates. The charter school must respond to reasonable requests for information from the chartering entity, the county board of education, or the State Superintendent of Public Instruction. Section 47604.3.

The chartering entity must:

- Identify at least one staff member as a contact person for the charter school.
- Visit the charter school at least annually.
- Ensure the charter school complies with all required reports.
- Monitor the fiscal condition of the charter school.
- Notify the State Department of Education if the charter is revoked, the charter renewal is granted or denied, or the charter school will cease operation.

Section 47604.32.

To finance these oversight activities, the chartering entity may charge the charter school the actual costs of oversight, up to one percent of the charter school's revenue. Sections 47604.32(f), 47613.

Audit and Reporting Requirements of Charter School

A charter school must submit a preliminary budget, two interim financial reports, and a final unaudited report each year to its chartering entity and the county superintendent of schools. Section 47604.33(a). A charter school must have an annual independent fiscal audit that follows generally accepted auditing principles performed. Sections 47605(b)(5)(I), 47605.6(b)(5)(I).

A charter school must also submit an annual unaudited statement of all receipts and expenditures to its chartering entity. Sections 1628, 42100, 47604.33, 47605(b)(5)(I), 47605(m).

Testing of Charter School Students

A charter school must comply with the same statewide testing programs as a traditional public school, and must follow state-mandated procedures for test administration. These tests include the Standardized Testing and Reporting (STAR) program, California High School Exit Exam, Physical Fitness Testing, and if warranted, the California English Language Development Test. Sections 47605(c), 47612.5(a)(3), 60600 *et seq.*

Staffing of Charter School

Teachers of a charter school must hold credentials equivalent to those of a regular public school teacher for “core” courses. The grade and subject assignment of a teacher at a charter school must also be consistent with the teacher’s credential. However charter schools have some leeway to hire non-credentialed teachers for non-core and non-college preparatory classes. Sections 47605(l), 47605.6(l).

All charter school employees, including those employed by a non-profit public benefit corporation, have the right to be represented through a collective bargaining process. Section 47611 and Gov’t Code § 3540.

Special Education

A charter school must comply with federal and state special education laws. Sections 47641 and 47646.

Financing of Charter School

For purposes of the California Constitution and school financing, a charter school is considered to be under the exclusive control of the officers of the public schools. Section 47612(a). A charter school is funded in a manner similar to that

of a traditional public school. The funding will follow the student, whether the student moves from a traditional public school to a charter school or from a charter school back to a traditional public school. *Wells v. One2One Learning Foundation*, 39 Cal. 4th 1164, 141 P.3d 225, 244, 48 Cal. Rptr. 3d 108 (2006).

To receive full funding a charter school must offer at least 175 days of instruction and meet the traditional public school requirements for total number of annual instructional minutes. It must also track average daily attendance of its students. Sections 46201(a)(3), 47612.5.

Facilities for Charter School

The Legislature intends for public school facilities to be shared fairly among all students, including those attending charter schools. In some cases, the district in which the charter school is located must provide facilities to the charter school. These facilities must be reasonably equivalent to those a student would occupy if attending a traditional public school. Section 47614.

A chartering entity may provide rent-free facilities as part of a three percent oversight fee. Section 47613(b). The district may also charge the charter school a pro rata share of the actual facilities costs, such as maintenance and cleaning services. Section 47614.

The Charter School Facility Program allows funding for construction and renovation of charter school facilities. The school can participate as an independent entity or through its chartering entity. Sections 17078.52 and 17078.66.

Charter schools have more freedom in selecting a facility than traditional public schools. Traditional public schools must comply with the Field Act, which requires public school buildings to be designed and constructed to fulfill special building standards set by the state. Sections 17280 and 81130 *et seq.* Charter schools, on the other hand, may be located in facilities that comply with the general building standards or the Field Act, or facilities exclusively owned or controlled by an entity not subject to California building standards, such as the federal government. Section 47610.5.

OVERVIEW OF GOVERNMENT CLAIMS ACT

The Government Claims Act serves two main purposes. First, it defines and limits public employee and public entity tort liability. Second, it establishes a mandatory claim presentation procedure. A party must first present a claim to

the public entity before filing certain claims for money or damages against a public employee or public entity. Gov't Code §§ 810-998.3.

Under the Government Claims Act, all governmental liability is statutory. *Nestle v. City of Santa Monica*, 6 Cal. 3d, 920, 932, 101 Cal. Rptr. 568 (1962); see *Recommendation Relating to Sovereign Immunity*, 4 Cal. L. Revision Comm'n Reports 801, 801-14 (1963).

Although these provisions are often referred to as the "Tort Claims Act," the California Supreme Court now refers to the statute as the "Government Claims Act," because the claims presentation requirements also apply to contract claims and other non-tort claims. *City of Stockton v. Superior Ct.*, 42 Cal. 4th 730, 171 P.3d 20, 68 Cal. Rptr. 3d 295 (2007). The Commission will follow the Court's practice.

The most significant features of the Government Claims Act are summarized below. This summary is intended to provide a basis for identifying and discussing the various policies served by the Act as they relate to charter schools.

All statutory references in this overview of the Government Claims Act are to the Government Code unless otherwise indicated.

Application of Government Claims Act

The Government Claims Act applies generally to a "public employee" or a "public entity." A public employee is an employee of a public entity. A "public entity" includes

The State, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state.

Section 811.2. In addition, a public entity may be further distinguished as the "state," a "local public entity," or a "judicial branch entity." Sections 900.3, 900.4.

In most cases, it is clear whether an entity is public. However, some public functions can be delegated to a private entity that is legally separate from the delegating entity. It is not clear that a private group performing public functions would be treated as a public entity under the various statutes regulating public entities, including the Government Claims Act.

In some instances, the Legislature has addressed that ambiguity. For example, all charter schools are considered public agencies for purposes of risk pooling under a joint powers agreement. Section 6528. The Legislature has not enacted a similar clarification of the status of a charter school under the Government Claims Act. Prior efforts to do so were not approved and are the apparent

impetus for this study. See, e.g., AB 1868 (Walters), as amended in Senate, July 2, 2008.

Tort Liability of Public Employee

As a default rule, a public employee is liable for an injury caused by the employee's own act or omission to the same extent as a private person. However, the Government Claims Act immunizes a public employee from tort liability in specified circumstances. Section 820. Statutory immunities most likely to apply to a school employee are briefly summarized below.

Immunity for Discretionary Act

A public employee who exercises discretion as part of the job is immune from liability for an injury that results from the exercise of that discretion. This immunity applies even if the discretion has been abused. Section 820.2.

The scope of discretionary immunity is limited to decisions that stem from an assessment of policy. A discretionary decision requires judgment and is made within the scope of employment. An employee must make a discretionary decision in a deliberate and considered manner with a conscious weighing of the risks and benefits. Otherwise, immunity will not attach. *Johnson v. California*, 69 Cal. 2d 782, 787-89, 447 P.2d 352, 73 Cal. Rptr. 240 (1968).

"Planning decision" and "operational decision" are terms used to distinguish discretionary decisions from non-discretionary decisions. A "planning" decision is discretionary and immune. An "operational" decision, which is made to implement a planning decision, is neither discretionary nor immune. *Caldwell v. Montoya*, 10 Cal. 4th 972, 981, 897 P.2d 1320, 42 Cal. Rptr. 2d 842 (1995); see also *Barner v. Leeds*, 24 Cal. 4th 676, 687, 13 P.3d 704, 102 Cal. Rptr. 2d 97 (2000).

Immunity from Vicarious Liability

A public employee is not vicariously liable for an injury caused by the act or omission of another person, unless otherwise provided by statute. Similarly, a mayor or member of a local government council, board, or commission is not liable for an injury caused by the act or omission of the governing body. However, direct liability may attach if the individual's own conduct causes an injury. Sections 820.8, 820.9.

Immunity for Execution, Enforcement, or Enactment of Law

A public employee who exercises due care is not liable for an injury that results from the execution or enforcement of the law. Liability for negligence is still possible if the employee has not exercised due care, but the public entity employer will remain immune from liability. This immunity does not extend to liability for false arrest or false imprisonment. Section 820.4 & Comment.

A public employee is not liable for any injury caused by adopting or failing to adopt an enactment, or by failing to enforce an enactment. Sections 810.6, 821.

Immunity for Action Under Invalid or Inapplicable Enactment

A public employee is not liable for simply complying with an enactment that is in fact unconstitutional, invalid, or inapplicable. A public employee who takes an action in good faith, without malice, and under the apparent authority of the enactment is not liable for an injury that results. However, the public employee remains liable to the same extent that liability would have attached if the enactment had been valid and applicable. Section 820.6.

Immunity for Misrepresentation

A public employee acting within the scope of employment is not liable for an injury caused by the employee's misrepresentation, even if negligent or intentional. However, this immunity does not apply if a public employee is guilty of "actual fraud, corruption or actual malice" in connection with the misrepresentation. Section 822.2.

Immunity from Injury Caused by Dangerous Condition of Public Property

The Government Claims Act specifies that a public employee is liable for a dangerous condition of public property if the plaintiff can establish that the dangerous condition existed at the time of the injury, proximately caused the injury, and created a reasonably foreseeable risk of the kind of injury incurred. In addition, the plaintiff must also be able to establish one of the following facts:

- (1) The employee's negligent or wrongful action created the dangerous condition, and the employee could have taken a safer alternative action. Section 840.2(a).
- (2) The employee was able to protect against the dangerous condition, and had sufficient notice to have taken protective measures. Section 840.2(b).

Tort Liability of Public Entity

In general, a public entity is *not* liable for an injury caused by an act or omission of the public entity, a public employee, or any other person, unless a statute specifically imposes liability. See *Recommendation Relating to Sovereign Immunity*, 4 Cal. L. Revision Comm'n Reports 801, 811 (1963).

The Government Claims Act describes a number specific circumstances in which a public entity *is* subject to tort liability. The areas of liability most relevant to charter schools are summarized briefly below. Statutes outside the Government Claims Act may also impose tort liability on a public entity. Section 815.

Liability for Act or Omission of Employee

One of the most significant statutory exceptions to the general rule of entity nonliability makes a public entity vicariously liable for an employee's torts, if the employee was acting within the scope of employment and the act or omission would have given rise to a cause of action against the employee. Section 815.2(a). Despite this exception, a public entity has absolute immunity from an injury that results from any misrepresentation by a public employee. Section 818.8. A public entity is also immune from vicarious liability for an employee's act or omission if the employee is immune. Section 815.2(b).

Liability for Act or Omission of Independent Contractor

Generally, a public entity has the same liability for an injury caused by an independent contractor that a private person would have. However, a public entity is not liable for an injury caused by an independent contractor if the entity would not have been liable for the same injury caused by an employee. Section 815.4. Thus, an immunity that shields a public entity from vicarious liability for an employee would also shield the entity from liability for an independent contractor.

Liability for Breach of Mandatory Duty

When a public entity is subject to a "mandatory duty" to protect against a particular kind of injury and it fails to discharge its duty, the public entity is liable for a resulting injury. Section 815.6.

Liability for Dangerous Condition of Public Property

A public entity is liable for an injury caused by a dangerous condition of its property, unless otherwise provided by statute. Section 835. A dangerous condition is one that creates a substantial risk of injury when the property is properly used with due care in a reasonably foreseeable manner. Section 830(a). To establish liability, the plaintiff must show that the dangerous condition existed at the time of the injury, proximately caused the injury, and created a reasonably foreseeable risk of the kind of injury that resulted. In addition, the plaintiff must establish one of the following facts:

- (1) A negligent or wrongful act or omission of an employee of the public entity in the scope of employment created the dangerous condition. Section 835(a).
- (2) The public entity had notice of the dangerous condition in sufficient time to have taken protective measures. Section 835(b).

Liability Established Outside Government Claims Act

The Government Claims Act is not the only statute that overrides the general rule of immunity. Any statute that provides for tort liability may subject a public entity to tort liability. Section 811.8. For example, the Vehicle Code expressly provides for public entity liability for an injury caused by the negligent or wrongful operation of a motor vehicle by a public employee acting within the scope of employment. Veh. Code § 17001.

Specific Immunities

The Government Claims Act provides a public entity with immunity in some specified circumstances including:

- Damages awarded primarily for the purpose of example and punishment. Section 818.
- Adopting or failing to adopt an enactment, or failing to enforce any law. Sections 810.6, 818.2.
- Injury caused by publishing drug conviction records, if it is for educational purposes and the name and identity on record are kept confidential. Section 818.7.

Defense and Indemnification

The Government Claims Act defines when a public entity can defend a public employee and when a public entity must indemnify an employee. It also defines when a public employee must indemnify a public entity.

Public Entity Defense of Public Employee

On the request of an employee, a public entity must defend the employee in a civil proceeding based on an injury alleged to have been caused by an act or omission of the employee in the scope of employment. Section 995. A public entity may defend a public employee in other specified circumstances. Sections 995.4(a)-(b), 995.6, 995.8, 995.9.

A public entity may refuse to defend an employee if the public entity determines at least one of the following:

- (1) The act or omission was outside the scope of employment.
- (2) The act or omission was the result of “actual fraud, corruption, or actual malice.”
- (3) The defense of the employee would create a conflict of interest between the public entity and the employee.

Section 995.2(a).

A public entity may not recover the cost of defense from the employee. Section 996.

A public entity that is required to defend an employee but refuses to do so must pay the employee’s reasonable expenses incurred in defending the action or proceeding. Section 996.4.

The public entity, however, is not required to pay for an employee’s defense if it can show at least one of the following:

- (1) The act or omission was outside the scope of employment.
- (2) The act or omission at issue was caused by “actual fraud, corruption, or actual malice.”
- (3) The action or proceeding is of a type in which there is no mandatory duty to defend an employee.

Section 996.4.

The rights of an employee under the defense provisions of the Government Claims Act are in addition to any rights that may exist under another enactment or contract. Section 996.6.

Indemnification of Public Employee by Public Entity

Generally, if a public entity defends an employee in an action or proceeding based on an act or omission within the employee’s scope of employment, and the employee reasonably cooperates with the defense in good faith, the entity must

pay any judgment, compromise, or settlement agreed to by the entity. Section 825(a). If the employee pays any part of a claim that the entity should have paid, the employee has a right to reimbursement. Section 825.2(a), (b).

A public entity, however, is not required to pay any part of a claim or judgment for punitive or exemplary damages. Section 825(b).

Notwithstanding the general rule, a public entity may not pay a judgment, compromise, or settlement arising from a claim or judgment against an elected official who tortiously interferes with a judicial action or proceeding. Section 825(f).

Indemnification of Public Entity by Public Employee

In general, a public employee is not required to indemnify a public entity that pays a claim or judgment against itself or the employee for an injury arising out of an act or omission of an employee. Section 825.4.

The general rule is subject to a number of exceptions conditioned on whether the public entity provided a defense to the employee, and if so, whether the public entity provided the defense pursuant to an agreement that reserved its rights against the employee:

- *If the public entity did not provide a defense, the employee must indemnify the public entity if (1) the employee's act or omission at issue was caused by actual fraud, corruption, or actual malice, or (2) the employee willfully failed to or refused to conduct the defense in good faith. Section 825.6(a)(1).*
- *If the public entity provided a defense pursuant to an agreement reserving the entity's rights against the employee, the employee is required to indemnify the public entity unless (1) the employee establishes that the act or omission at issue occurred within the scope of employment, and (2) the public entity cannot establish that the employee's act or omission at issue was caused by actual fraud, corruption, or actual malice, or that the employee willfully failed to or refused to reasonably cooperate in good faith in the defense. Section 825.6(a)(2).*
- *If the public entity provided a defense in the absence of an agreement reserving the entity's rights against the employee, the employee must indemnify the public entity if the employee willfully failed to or refused to reasonably cooperate in good faith in the defense. Section 825.6(a)(3).*

The rules on indemnification of a public entity may be subject to contrary provisions of a memorandum of understanding. Section 825.6(c).

Claim Presentation

Claim Presentation Prerequisite to Suit

In general, a claimant may not bring a suit for money or damages directly against a public entity or a public employee. Sections 905, 910, 950.6(a). Instead, a claimant must first present a written claim to the public entity. If the entity rejects the claim, the claimant may file suit against the entity or its employee. Sections 945.4, 950.4.

When the entity accepts a presented claim, the entity may offer to pay the claim in part or in full. A claimant who accepts the offer may not file suit for any accepted portion of the settlement offer. Section 946.

Exceptions to and Waiver of Claim Presentation Requirement

The claim presentation requirement is subject to a number of specific exceptions. The most significant exceptions likely to be relevant to charter schools include the following:

- Wage claim. Section 905(c).
- Worker's compensation claim. Section 905(d).
- Claim by another public entity. Section 905(i).
- Claim subject to a contractually established claim procedure. Sections 930, 930.2.
- Claim against a public entity that has not properly identified itself in the "Roster of Public Agencies." Section 946.4.
- Claim for payment of debt. Section 905(g).
- Unemployment claim. Section 905(j).

In addition, a court has a limited ability to waive the claim presentation requirement. Section 946.6(c)(1)-(4).

Manner of Claim Presentation

A claim or amendment to a claim must be properly presented to the public entity or the claimant may not subsequently file suit. Section 915(a)-(e). The claimant may amend a claim at any time before the claim presentation period has expired or before the public entity has taken final action on the claim, whichever is later. Section 910.6(a).

If a claim is substantially out of compliance with statutory requirements, the public entity can give the claimant written notice of the insufficiency, describing any defect or omission in the claim. Section 910.8. An entity that does not

provide notice of an insufficiency waives any defense based on a defect or omission in the claim. Section 911.

Time for Claim Presentation

The time period available for presenting a claim is six months or one year, depending on the basis for the claim.

- *Six months.* A claim for a cause of action for death, or for injury to a person, personal property, or growing crops.
- *One year.* Any other cause of action.

Section 911.2(a), (b).

A claimant who misses a six-month claim deadline may present an application to present the claim late. An application to file a late claim must be presented within a reasonable time, but not more than one year after the cause of action accrues. Section 911.4(a)-(c).

If the public entity denies the application, either affirmatively or by inaction, the claimant may petition the superior court for relief from the claim presentation requirement. Section 946.6.

RELEVANT CASES INVOLVING THE GOVERNMENT CLAIMS ACT AND THE CHARTER SCHOOLS ACT

Two recent cases are relevant to the question of whether a charter school should be treated as a public entity for purposes of the Government Claims Act: *Wells v. One2One Learning Foundation*, 39 Cal. 4th 1164, 141 P.3d 225, 48 Cal. Rptr. 3d 108 (2006), and *Knapp v. Palisades Charter High School*, 146 Cal. App. 4th 708, 53 Cal. Rptr. 3d 182 (2007).

Wells v. One2One Learning Foundation

The *Wells* court held that a charter school is not a public entity for purposes of the California False Claims Act (“CFCA”). It did not determine whether charter schools are public entities for purposes of the Government Claims Act. *Wells v. One2One Learning Foundation*, 39 Cal. 4th 1164, 141 P.3d 225, 243, 253-54 (2006).

In *Wells*, a group of students and their parents sued a group of charter schools operated by a California public benefit corporation. The basis of the complaint is that the schools did not provide the instructional services, equipment, and supplies required as part of a distance learning program. The schools only

collected average daily attendance forms, which were then used to collect public money for services and supplies that were never provided. Among other allegations, the complaint included a CFCA cause of action for qui tam relief on behalf of the state.

The plaintiffs did not comply with the claim presentation requirements of the Government Claims Act. *Id.* at 232.

The trial court dismissed the claims, holding that the charter school defendants were public entities and thus subject to the claim presentation requirements of the Government Claims Act for purposes of the CFCA.

The plaintiffs appealed. The Court of Appeal concurred that charter schools are public entities. The Court of Appeal also held that public entities can be sued under the CFCA.

The California Supreme Court reversed, holding that charter schools are not public entities under the CFCA and that public entities may not be sued under the CFCA. Thus, the charter school defendants could be sued under the CFCA but not the school district. *Id.* at 241.

In its reasoning, the Court first reviewed the reasons why a public entity should not be subject to the CFCA. Among its analyses, the Court examined school districts in light of the tenet that public entities should not be subject to a general statute if their inclusion would infringe on the sovereign powers of the government. *Id.* at 237.

The Court noted that the primary purpose of the CFCA and its harsh financial penalties is to protect the government fisc. The Court also reasoned that providing a free public education is among the sovereign powers of the government and this power is exercised through local school districts. School districts, however, have limited power to raise money through additional taxation. The harsh financial penalties of the CFCA would, therefore, impede a school district's ability to fulfill its core mission to provide children with a free public education. Thus, allowing school districts to be sued under the CFCA does not promote the purpose of the CFCA. *Id.* at 238-240.

When the Court rejected the plaintiffs' argument that charter schools should be considered public entities for purposes of the CFCA, it acknowledged that a charter school is considered a public school for purposes of funding and academics and can be considered a school district for some purposes. *Id.* at 225, 243, 252.

However, the Court ultimately concluded that subjecting charter schools to the CFCA does not infringe the government's sovereign power over education. School districts have the primary responsibility for operating the state's constitutionally required free public education. If a school district is insolvent or severely financially constrained by the harsh monetary penalties of the CFCA, the promise of an adequate free public education is threatened for all students in the district.

Charter schools and their operators do not have similar sovereign responsibility. If a charter school becomes insolvent and closes, the revenue associated with each charter school student flows back to the district and the students will simply return to the district's traditional public schools. *Id.* at 244.

As part of its analysis, the Court focused on the independence of the charter school from the school district. The charter school's relationship with the sponsoring school district is limited to that defined in the school charter. Furthermore, a charter school operated by a non-profit public benefit corporation has significant autonomy with regard to financial matters. As long as the chartering district fulfills its oversight responsibilities, it is not liable for the charter school's debts and obligations. Thus, subjecting charter schools to the CFCA does not frustrate the underlying policy, because even if the charter school closes, students will continue to have local access to a free public education in the traditional public schools.

The Court also considered whether a CFCA cause of action against the charter school defendants required prior presentation of a claim under the Government Claims Act. It held that prior presentation of the claim was not required but did not decide the issue on the basis of whether a charter school is a public entity for the purposes of the Government Claims Act. *Id.* at 253.

Knapp v. Palisades Charter High School

Knapp did consider the question of whether a charter school should be considered a public entity for purposes of the Government Claims Act. The court held that an incorporated charter school that is independent from the chartering entity is *not* a public entity for purposes of the Government Claims Act. 146 Cal. App. 4th 708, 53 Cal. Rptr. 3d 182, 188 (2007).

The case arose after the plaintiff, Courtney Knapp ("Knapp"), then an eighth grade student, visited defendant Palisades Charter High School ("Palisades") as a prospective student. According to the undisputed facts, Knapp was the target

of sexual banter by a teacher during a classroom visit. Knapp was humiliated and embarrassed, and as a result of her experience, ultimately chose a different high school. *Id.* at 183.

Knapp first presented a claim for damages with the County of Los Angeles under the Government Claims Act. The County denied the claim, stating that the claim did not involve the County's officers, agents, or employees. Knapp never presented a claim for damages with either Palisades or the Los Angeles Unified School District. *Id.* at 184.

Subsequently, Knapp sued Palisades, the Los Angeles Unified School District, and the teacher. The trial court granted the defendants' motion for summary judgment because Knapp did not present a claim to those defendants before filing the lawsuit. *Id.* at 185.

The Court of Appeal reviewed the trial court's decision de novo with regard only to the claims against Palisades and the teacher. In determining whether a claim against an incorporated charter school must satisfy the Government Claims Act, the court followed guidance provided by the California Supreme Court in *Wells*. *Id.* at 187.

Taking direction from *Wells*, the *Knapp* court determined that an incorporated charter school is not a public entity for purposes of the Government Claims Act. The *Knapp* court focused on the charter school's status as an entity that is independent from the chartering district. The school had its own board and budget, hired its own teachers and independent public accountant, had its own authorized agent for service of process, carried its own insurance, and paid the school district for any services rendered. Furthermore, the chartering entity is not liable for claims arising from the school. Thus, as a nonprofit corporation independent from the chartering district, Palisades was not a public entity and Knapp was not required to first present a written claim to the school under the Government Claims Act. *Knapp* at 188.

PROPOSED METHODOLOGY

The staff recommends that the Commission address the issues involved in this study in the following order:

- (1) Functional and policy analysis of public entity tort liability and indemnification requirements under the Government Claims Act.

- (2) Functional and policy analysis of the claim presentation requirement under the Government Claims Act.
- (3) Functional and policy analysis of the Charter Schools Act.
- (4) Examination of the extent to which other quasi-public entities in California are treated as public entities and the underlying policy reasons for the treatment.
- (5) Examination of how other states treat charter schools with regard to tort immunity.
- (6) Application of the policy rationales underlying the Government Claims Act to charter schools.

We recommend beginning with an examination of the Government Claims Act in order to first identify the public policies served by that Act. It should be helpful to have that information in mind before analyzing charter school law and policy, in order to make it easier to recognize which aspects of charter school organization, operations, and policy are relevant to the purposes served by the Government Claims Act.

It would also be helpful to know how other “quasi-public entities” are treated in California. To what extent are they considered public entities under various statutes governing public entities? Are they similar to charter schools with respect to relevant policy concerns?

Finally, it might be useful to know whether other states treat charter schools as public entities with respect to tort liability. We hope to use student research resources to review the relevant law of other jurisdictions.

Once we have all of that information, we can conclude by applying it to determine the extent to which a charter school is similar to a public entity with respect to the relevant policies. We expect that the answer might be complex, because different parts of the Government Claims Act (e.g., tort immunity and claims presentation) may serve different policy purposes. Furthermore, different kinds of charter schools (e.g., “dependent” and “independent” charter schools) may fit those policy purposes to differing degrees.

Respectfully submitted,

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