



DANNIS WOLIVER KELLEY

Attorneys at Law



## 2018 LEGISLATIVE SESSION CHARTER SCHOOLS LEGISLATION

Each year in November, Danniss Woliver Kelley distributes a summary of Legislation and Case Law Highlights. These are legal developments of interest for K-12 school districts and covers all aspects of Education Law. Below are the Charter Schools highlights. For a complete list of the case law summaries, please go to [www.DWKesq.com](http://www.DWKesq.com) and enter “legislative case” in the search bar.

### **AB No. 406 - Prohibits Operation of Charter Schools by For-Profit Entities**

Assembly Bill No. 406 (McCarty) revises Education Code 47604 to prohibit a charter school that submits a new petition for the establishment of a charter, a material revision request, or renewal petition on or after July 1, 2019, from being operated as, or by, a for-profit corporation, for-profit educational management organization, or for-profit charter management organization. A charter is “operated as, or by” a for-profit entity when the entity provides any of the following services to the charter school: (1) nominates, appoints, or removes charter school’s board members or officers; (2) employs, supervises, or dismisses charter school’s employees; (3) manages the charter school’s day-to-day operations as its administrative manager; (4) approves, denies, or manages the charter school’s budget or any expenditures that are not authorized by its governing body; and (5) provides services to a charter school before the charter school’s governing body has approved the contract for those services at a publicly noticed meeting. The revision further provides that a charter school shall not enter into a subcontract to avoid the prohibition. (Stats. 2018, ch. 291, effective January 1, 2019.)

### **AB No. 1747 - Requires Charter Petitions to include Development of Comprehensive School Safety Plans**

Assembly Bill No. 1747 (Rodriguez) amends the Charter Schools Act to require that charter school petitions include the development of a comprehensive school safety plan according to requirements applicable to school districts. School safety plans must now also include input from classified employees of the district or charter school, a fire department and other first responder entities, and must include procedures for conducting tactical responses to criminal incidents, including procedures related to persons with guns on school campuses and at school-related functions. CDE is also required to provide general direction on what to include in a school building disaster plan, and must maintain on its website a compliance checklist for developing a comprehensive school safety plan. (Stats. 2018, ch. 806, effective January 1, 2019.)

### **AB No. 1871 - Requires Charter Schools to Provide Free or Reduced-Price Meals**

Assembly Bill No. 1871 (Bonta) amends current law to require that classroom-based charter schools provide students who meet federal eligibility criteria for free and reduced price meals with one nutritionally adequate free or reduced-price meal during each school day. Non-classroom based instruction charter schools must also now provide free or reduced-price meals to needy students on any school day that such students are scheduled for educational services lasting two or more hours at a school site, resource center, meeting space, or other satellite facility operated by the charter school. For existing charter schools this requirement shall be effective starting with the 2019-2020 school year. Charter schools commencing operations on or after July 1, 2019, must comply with this requirement no later than July 1 of the school year after becoming operational, and must provide written notice to parents/guardians/educational rights holders at the time of their application for enrollment disclosing time period when free and reduced-price meals will not be provided by the charter school. Charter authorizers are to provide technical assistance to charter schools related to implementation of this requirement upon request and to the extent reasonable within existing resources. (Stats. 2018, ch. 480, effective January 1, 2019.)

### **AB No. 2601 - Mandates Sexual Health and HIV Prevention Education by Charter Schools**

Assembly Bill No. 2601 (Weber) revises the California Healthy Youth Act to require that charter schools ensure that all their students in grades 7-12 receive comprehensive sexual health, and human immunodeficiency virus (HIV) prevention education starting with the 2019-2020 school year. (Stats. 2018, ch. 495, effective January 1, 2019.)

## New Students/Special Education Laws Now Applicable to Charter Schools

One of the challenges that charter authorizers face is determining exactly which Education Code laws do and do not apply to charter schools, in light of the Education Code waiver. This legislative season, many new laws were enacted outside of the Charter Schools Act that apply to charter schools as well as regular school districts. Summaries of these bills are provided below, including:

- **AB No. 1248** - Permits Religious, Ceremonial or Cultural Adornments at School Graduation Ceremonies
- **AB No. 1974** - Prohibits School Districts and Charter Schools from Collecting Debt from Pupils
- **AB No. 2009** - Requires Emergency Plan for Cardiac Arrest And Other Health Emergencies When AED Present
- **AB No. 2015** - Mandates that School Districts and Charter Schools Provide Information on FAFSA and the California Dream Act Application
- **AB No. 2022** - Requires Districts, Including Charter Schools, to Notify Students Twice Per Year of Available Mental Health Services
- **AB No. 2109** - Clarifies Application of Home Hospital Services for Students with Temporary Disabilities to Include Charter Schools, Honorary Diplomas to Terminally Ill Students
- **AB No. 2121** - Extends to Migratory Children the State Minimum/Reduced Graduation Requirements Available To Foster Youth
- **AB No. 2239** - Encourages A-G Certification of Heritage Language Courses
- **AB No. 2289** - Provides Rights for Pregnant and Parenting Pupils
- **AB No. 2291** - Requires Adoption of Bullying and Cyberbullying Prevention Procedures
- **AB No. 2315** - Requires Creation of Telehealth Guidelines in Public School
- **AB No. 2622** - Reduces Amount of Time Required For Afterschool Program Grants in Rural Areas
- **AB No. 2657** - Allows Use of Specified Restraint and Seclusion Techniques to Control Clear and Present Danger
- **AB No. 2735** - Prohibits English Learners from Being Denied Enrollment in Regular and Required Courses
- **AB No. 2878** - Adds Family Engagement to the State Priorities that Must be Addressed by LCAPs
- **AB No. 3022** - Allows Districts, County Offices of Education and Charter Schools to Grant Retroactive High School Diplomas to Deported Students
- **AB No. 3043** - Modifies Pupil Nutrition Requirement to Allow Universal Breakfast Via Federal Funds
- **SB No. 972** - Mandates the National Suicide Prevention Lifeline Number to be Printed on Pupil Identification Cards
- **SB No. 1104** - Mandates Identification of Human Trafficking Prevention Resources for Parents/Guardians
- **SB No. 1109** - Requires Athletic Programs to Provide Opioid Factsheets to Athletes
- **SB No. 1428** - Prohibits Denial of Work Permit Based on Grades, GPA or Attendance

### **AB No. 1248 - Permits Religious, Ceremonial or Cultural Adornments at School Graduation Ceremonies**

Assembly Bill No. 1248 (Gloria) adds Section 35183.1 to the Education Code, to allow pupils to wear traditional tribal regalia or recognized objects of religious or cultural significance at school graduation ceremonies. The new law does not limit a school district's, county office of education's, or charter school's discretion from prohibiting items that may cause a substantial disruption or material interference at the ceremony. (Stats. 2018, ch. 804, effective January 1, 2019.)

### **AB No. 1974 - Prohibits School Districts and Charter Schools from Collecting Debt from Pupils**

Assembly Bill No. 1974 (Gonzalez Fletcher and Quirk-Silva) adds Section 49014 to the Education Code, to prohibit a school district or charter school from collecting debt from a student or former student, unless emancipated at the time the debt is incurred, and prohibits a school district or public school from taking a negative action, including but not limited to, denying full credit for class assignments, full and equal participation in classroom activities, access to on-campus educational facilities or denying or withholding a diploma, against a student or former student because of a debt owed. This excludes debts owed as a result of vandalism and debts owed to cover the replacement of school property. (Stats. 2018, ch. 577, effective January 1, 2019.)

### **AB No. 2009 - Requires Emergency Plan for Cardiac Arrest and Other Health Emergencies When AED Present**

Assembly Bill No. 2009 (Maienschein) requires any school district or charter school that offers an interscholastic athletic program (1) to ensure that there is a written emergency action plan in place and posted, describing the location and procedures to be followed in the event of sudden cardiac arrest or other medical emergency related to the athletic program's activities or events and, (2) commencing July 1, 2019, to acquire at least one automatic emergency defibrillator, or AED, for each school within the school district or the charter school to be available on campus, encourage their use for emergency care, and ensure proper maintenance and regular testing. This bill provides that an employee of a school district or charter school will not be liable for civil damages resulting from certain uses, attempted uses, or non-uses of an AED in the rendering of emergency care or treatment and a public school, school district, or charter school that complies with certain requirements related to an AED will not be liable for any civil damages resulting from any act or omission in the rendering of emergency care or treatment. (Stats. 2018, ch. 646, effective January 1, 2019.)

**AB No. 2015 - Mandates that School Districts and Charter Schools Provide Information on FAFSA and the California Dream Act Application**

Assembly Bill No. 2015 (Reyes) adds Section 51225.8 to the Education Code, to require that school districts and charter schools ensure that every student receives information on how to properly complete and submit the Free Application for Federal Student Aid (FAFSA) or the California Dream Act Applications, as appropriate, at least once before the student enters grade 12. A paper copy of the FAFSA or the California Dream Act Application must be provided to a student upon the request of a student or parent/guardian. School districts and charter schools are expected to comply with these requirements by the 2020-2021 school year. (Stats. 2018, ch. 533, effective January 1, 2019.)

**AB No. 2022 - Requires Districts, Including Charter Schools, to Notify Students Twice Per Year of Available Mental Health Services**

Assembly Bill No. 2022 (Chu) adds Section 49428 to the Education Code, requiring all schools, including charter schools, to notify pupils and their parents or guardians at least twice per year of the available mental health services on the campus and in the community. The notice must include an explanation of how the student and the pupil or guardian may initiate and access the service. (Stats. 2018, ch. [484], effective January 1, 2019.)

**AB No. 2109 - Clarifies Home Hospital Services for Students with Temporary Disabilities to Include Charter Schools, Honorary Diplomas to Terminally Ill Students**

Assembly Bill No. 2109 (O'Donnell) amends provisions of the Education Code to clarify that a pupil with a temporary disability may receive individual instruction in the home by the school district in which the pupil is deemed to reside or within a hospital or other residential health facility by the school district in which the hospital or residential health facility is located. If a student receives individual instruction within a hospital or residential health facility for less than five days per week, a school district or charter school may also continue to enroll those students to ensure their timely reentry when the hospitalization or treatment has ended or to provide the pupil with instruction for the days of the week they are not receiving individual instruction in the hospital or residential health facility. The bill also authorizes a school district to confer an honorary high school diploma upon a pupil who is terminally ill. (Stats. 2018, ch. 167, effective January 1, 2019.)

**AB No. 2121 - Extends to Migratory Children the State Minimum/Reduced Graduation Requirements Available To Foster Youth**

Assembly Bill No. 2121 (Caballero) amends Section 51225.1 of the Education Code, to extend to migratory students an exemption from all local requirements that exceed statewide coursework requirements, unless the student is reasonably able to complete the local graduation requirements in time to graduate after the 4th year of high school, and to students participating in an English language proficiency program for newly arrived immigrant students who are in their 3rd or 4th year of high school. Additionally, with regard to these groups of students, the new law requires that a school district and county office of education grant full or partial credit for coursework satisfactorily completed even if the student did not complete the entire course. Both requirements now also apply to charter schools. (Stats. 2018, ch. 581, effective January 1, 2019.)

**AB No. 2239 - Encourages A-G Certification of Heritage Language Courses**

Assembly Bill No. 2239 (E. Garcia) adds Section 51225.37 to the Education Code, requiring the CDE to encourage school districts and charter schools that offer heritage language courses (i.e., world language courses designed for native speakers) to seek A-G certification of those courses so they may be used by students to fulfill world language course requirements for admission to California State University or University of California. (Stats. 2018, ch. 188, effective January 1, 2019.)

**AB No. 2289 - Provides Rights for Pregnant and Parenting Pupils**

Assembly Bill No. 2289 (Weber) prohibits educational institutions, including charter schools, from applying any rule concerning a pupil's actual or potential parental, family, or marital status that treats pupils differently on the basis of sex. Pursuant to this bill, pregnant and parenting pupils are entitled to accommodations, such as eight (8) weeks of parental leave, and local educational agencies must notify pregnant and parenting pupils and parents and guardians of pupils of the rights and options available. Any complaint regarding these requirements must be filed with the local educational agency pursuant to the Uniform Complaint Procedures. (Stats. 2018, ch. 942, effective January 1, 2019.)

**AB No. 2291 - Requires Adoption of Bullying and Cyberbullying Prevention Procedures**

Assembly Bill No. 2291 (Chiu) amends Section 234.4 and 32283.5 of the Education Code, to require local educational agencies, including charter schools, to adopt procedures to prevent acts of bullying and cyberbullying, and make the CDE online training module regarding bullying or bullying prevention available to all employees who interact with students. (Stats. 2018, ch. 491, effective January 1, 2019.)



**AB No. 2315 - Requires Creation of Telehealth Guidelines in Public Schools, Including Charter Schools**

Assembly Bill No. 2315 (Quirk-Silva) adds Section 49429 to the Education Code, to require CDE to consult with the State Department of Health Care Services to develop guidelines regarding the use of telehealth technology in public schools, including charter schools, for the purpose of providing mental health and behavioral health services on school campuses. The guidelines must be developed by July 1, 2020. The guidelines must include the qualifications to provide mental and/or behavioral health services, potential sources of funding, accessing reimbursement through Medi-Cal or other similar programs, the importance of parental consent to such services, and steps necessary to protect the security and privacy of the data submitted, among others. (Stats. 2018, ch. [759], effective January 1, 2019.)

**AB No. 2622 - Reduces Amount of Time Required for Afterschool Program Grants in Rural Areas**

Assembly Bill No. 2622 (Dahle) amends and repeals Section 8483 of the Education Code, thereby reducing attendance percentage requirements for After School Safety and Education (ASES) programs located in very low-density areas relative to the California Department of Education's authority to reduce or terminate grants. Also, for purposes of transferring funds, this bill exempts an ASES program operating at a school site located in a very low-density area from the requirement that it have an established waiting list for enrollment and to transfer funds only from another school program that has met 70% of its attendance goal. Lastly, this bill authorizes very low-density area ASES programs to close at 5:00 p.m. The bill applies to charter schools. (Stats. 2018, ch. 265, effective January 1, 2019.)

**AB No. 2657 - Allows Use of Specified Restraint and Seclusion Techniques to Control Clear and Present Danger**

Assembly Bill No. 2657 (Weber) adds Sections 49005 through 49006.4 of the Education Code, to authorize educational providers to use behavioral restraints, including physical and mechanical restraints, or seclusion techniques, as defined, to control student behavior that poses a clear and present danger of serious physical harm to the pupil or others and cannot be immediately prevented by a response that is less restrictive and so long as other specified conditions are met. Educational providers are defined as persons who provide educational or related services, support, or other assistance to a pupil enrolled in an educational program provided by an LEA, including charter schools, or a nonpublic school or agency. Educational providers are prohibited from using this type of restraint for the purpose of coercion, discipline, convenience, or retaliation. Certain restraint and seclusion techniques such as electric shock, use of noxious, toxic or unpleasant substances near the face of an individual, and other interventions of that nature, remain prohibited. Restraint and seclusion techniques, as defined, may only be used as emergency interventions and may not be substitutes for a systematic behavioral intervention plan. Educational providers must also follow the existing processes for emergency interventions as set forth in Education Code section 56521.1, including behavior emergency reporting requirements. Finally, LEAs are required to report to CDE annually on the use of behavioral restraints and seclusion for pupils, as specified, to be posted on the CDE's Web site. (Stats. 2018, ch. 998, effective January 1, 2019.)

**AB No. 2735 - Prohibits English Learners from Being Denied Enrollment in Regular and Required Courses**

Assembly Bill No. 2735 (O'Donnell) adds Section 60811.8 to the Education Code, to require school districts and charter schools with one or more English learners to assess the English language development of each pupil. Beginning with the 2019-2020 school year, this bill prohibits a middle school or high school from denying pupils classified as English learners from participation in a school standard instructional program, including courses required as of January 1, 2019. (Stats. 2018, ch. 304, effective 2019-20 school year.)

**AB No. 2878 - Adds Family Engagement to the State Priorities that Must be Addressed by LCAPs**

Assembly Bill No. 2878 (Chávez) amends Sections 52060 and 52066 of the Education Code, to add to the enumerated state priorities "family engagement" for inclusion in an LEA's LCAP. Family engagement includes, but is not limited to efforts by the school district and each individual school site to apply research-based practices, such as welcoming all families into the school community, engaging in effective two-way communication, supporting pupil success, and empowering families to advocate for equity and access. Family engagement further includes, but is not limited to, partnering with families to inform, influence, and create practices and programs that support pupil success and collaboration with families and the broader community, expanding pupil learning opportunities and community services, and promoting civic participation. This requirement applies to charter school LCAPs. (Stats. 2018, ch. 826, effective January 1, 2019.)

**AB No. 3022 - Allows Districts, County Offices of Education and Charter Schools to Grant Retroactive High School Diplomas to Deported Students**

Assembly Bill No. 3022 (Gonzalez Fletcher) amends Section 51430 of the Education Code, providing students who have been deported, voluntarily or otherwise, an opportunity to complete their high school diploma. The bill authorizes school districts, county offices of education, or charter schools to retroactively grant a high school diploma to a person who departed California against his or her will, and at the time of departure, was enrolled in grade 12 and was in good academic standing. The bill defines “a person who departed California against his or her will” as a person in the custody of a government agency, or subject to a lawful order from a court or government agency for removal from California. In considering whether to award a retroactive high school diploma to a student, schools must consider any coursework that has been completed by the student through online or virtual courses. (Stats 2018, ch. 772, effective January 1, 2019.)

**AB No. 3043 - Modifies Pupil Nutrition Requirement to Allow Universal Breakfast via Federal Funds**

Assembly Bill No. 3043 (Berman) amends Education Code provisions to allow a school district, county office of education, private nonprofit school, charter school or residential child care institution to provide a nutritionally adequate breakfast that qualifies for reimbursement under the federal School Breakfast Program, to every pupil at no charge. The bill also authorizes the governing board of any school district to use expenditures from the cafeteria fund or cafeteria account to pay for the universal breakfast, including purchase of mobile food facilities to support administration of the federal child nutrition programs. However, if the mobile food facility is used for any other purpose, it must be funded entirely by funds outside of the cafeteria fund. The bill also requires that the breakfasts and lunches provided to pupils using state funds, in addition to other food and drinks sold on school campuses, be consistent with the nutritional requirements for the federal School Breakfast Program or federal School Lunch Program and qualify for reimbursement under those same federal laws. (Stats. 2018, ch. 593, effective January 1, 2019.)

**SB No. 972 - Mandates the National Suicide Prevention Lifeline Number to be Printed on Pupil Identification Cards**

Senate Bill No. 972 (Portantino) requires public schools, charter schools and private schools that serve pupils in any of grades 7-12 and that issue pupil identification cards, to print the National Suicide Prevention Lifeline phone number on those identification cards commencing July 1, 2019. The bill also permits the inclusion of the Crisis Text Line number as well as the local suicide prevention hotline number. Notwithstanding the above requirements, any school that has unissued pupil or student identification cards that do not comply with these requirements as of January 1, 2019, may issue those cards until the supply is depleted. This new requirement applies to pupil or student identification cards issued for the first time or as a replacement. (Stats. 2018, ch. 460, effective July 1, 2019.)

**SB No. 1104 - Mandates Identification of Human Trafficking Prevention Resources for Parents/Guardians**

Senate Bill No. 179 (Roth) Section 49381 is added to the Education Code to require the governing board of a school district or governing body of a charter school to work with their sixth through twelfth grade schools to identify the most appropriate methods of informing parents and guardians of human trafficking prevention resources. The methods identified must be implemented by January 1, 2020. (Stats. 2018, ch. 848, effective January 1, 2019.)

**SB No. 1109 - Requires Athletic Programs to Provide Opioid Factsheets to Athletes**

Senate Bill No. 1109 (Bates) adds Section 49476 to the Education Code, to require any school district, charter school, private school or youth sports organization that offers an athletic program to annually give each athlete an Opioid Factsheet for Patients, published by the Centers for Disease Control and Prevention. The bill also requires that each athlete and his or her parent sign a document acknowledging receipt of the factsheet and return it to the agency before the student begins practice or competition. Agencies may send factsheets electronically by fax or email. (Stats. 2018, ch. 693, effective January 1, 2019.)

**SB No. 1428 - Prohibits Denial of Work Permit Based on Grades, GPA or Attendance**

Senate Bill No. 1428 (McGuire) adds Section 49120 to the Education Code, to prohibit the superintendent of a school district, a county superintendent of schools, or the chief executive officer of a charter school from denying a student a work permit based on his or her grades, grade point average, or school attendance if the pupil is applying for the work permit in order to participate in a government employment and training program which will occur during the summer recess or school vacation. (Stats. 2018, ch. 420, effective January 1, 2019.)

Dannis Woliver Kelley (DWK) is a full service education law firm focused entirely on serving and providing legal representation for California public school districts, county offices of education, community colleges and other educational organizations. Established in 1976, DWK is one of the largest women-owned law firms in the country. With over 55 attorneys and seven offices across the state, the firm’s areas of practice include: Board Ethics, Transparency and Accountability; Business and Property; Charter Schools; Construction; Labor, Employment and Personnel; Litigation; Public Finance; and Students and Special Education. DWK provides preventive, practical and cost effective legal counsel on key issues surrounding your core mission—the education of students.