

**aa/rr**  
Atkinson, Andelson  
Loya, Ruud & Romo  
A Professional Law Corporation


**The Appellate Role Of The County Board Of Education:**  
Interdistrict Transfers, Expulsions, And Charter Schools

**Presented by:**  
Aaron V. O'Donnell, Partner  
Sukhi Ahluwalia, Partner  
**Atkinson, Andelson, Loya, Ruud & Romo**

Cerritos • Fresno • Irvine • Pasadena • Pleasanton • Riverside • Sacramento • San Diego

## Agenda

- Common elements of appeal procedures
- Interdistrict transfer appeals
- Expulsion appeals
- Charter school appeals



**aa/rr**

1

## Common Elements Of Appeal Procedures Generally

1. Record – what information may the appellate body consider?
2. Timelines – when must appeal be filed? What if it is late?
3. Standard and scope of review – by what standard is the decision of the lower body assessed?
4. Form of decision by the appellate body – any required findings?
5. Extent of the appellate body's authority to order/prohibit parties or lower body
6. Further appeals to higher appellate bodies?

## Interdistrict Transfer Appeals

- Education Code § 46600: Interdistrict attendance agreements and permits
- Education Code § 46601: Appeals
- Designee of County Superintendent investigates
- Education Code does not articulate criteria by which appeals are to be decided – this is left to Board policy
- Board grants or denies appeal on its merits
- Limited exception: Remand permitted (but not required) if new evidence or grounds introduced during appeal

## Expulsion Appeals

- Review based on record of expulsion proceedings
- “No evidence other than that contained in the record of the proceedings of the school board may be heard unless a *de novo* proceeding is granted as provided in [Education Code] Section 48923.”

## Expulsion Appeals – Scope of Review

- County board of education review is limited to the following questions:
  - a) Whether the district governing board acted without or in excess of its jurisdiction.
  - b) Whether there was a fair hearing before the district governing board.
  - c) Whether there was a prejudicial abuse of discretion in the hearing.
  - d) Whether there is relevant and material evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the school district hearing.

## Expulsion Appeals – Scope of Review

- “Abuse of discretion” includes:
  - A. School district officials have not met the statutory procedural requirements.
  - B. The decision to expel is not supported by the findings required by Education Code § 48915.
  - C. The school district’s findings are not supported by the evidence.

## Expulsion Appeals - Decision

- County Board must affirm or reverse decision of governing board, except:
  - a) Remand or hearing *de novo* permitted if “relevant and material evidence exists which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the governing board”
  - b) Remand if decision of the governing board is not supported by findings required by Education Code 48915(c), but evidence supporting the required findings exists in the record
- If expulsion reversed, county board may order record of expulsion expunged

## Charter School Appeals

- The role of a county board of education in review of the decision of a school district governing board with respect to a charter petition varies, depending on whether the decision under review is (a) a decision to deny an initial petition to establish a charter school, (b) a decision to deny renewal of a charter, or (c) a decision to revoke a charter.

## Charter School Appeals – Grounds for Denial of a Charter Petition

- a) Unsound educational program
- b) Petitioners “demonstrably unlikely to successfully implement” the program set forth in the petition
- c) Petition missing required signatures
- d) Petition missing affirmation of required conditions: nonsectarian, nondiscrimination, admission not based on residence (unless conversion of existing school)
- e) Petition does not contain “reasonably comprehensive descriptions” of various aspects of the school’s program and operations specified in Education Code § 47605(b)(5).
- f) The petition does not contain a declaration whether the charter school will be deemed the exclusive public employer of the charter school’s employees for purposes of the EERA

## Charter School Appeals –Petition to Establish or Renew Charter School

- County board of education is basically called upon to consider the same issues as those considered by the school district.
- For renewals, county board must also consider
  - Charter School must meet specified academic performance criteria
  - Past performance in academics, finances & operation and future plans
- Written factual findings required to deny appeal.
- If appeal is granted, county board of education becomes chartering entity.

## Charter School Appeals - Revocations

- County board of education is called upon to consider principally whether “substantial evidence” supported the decision of the school district
- This is a standard of review that is more deferential to the decision of the school district.
- If revocation is reversed, school district remains chartering entity

## Charter School Appeals – Grounds for Revocation of a Charter

1. Material violation of the conditions, standards, or procedures set forth in the charter;
  2. Failure to meet or pursue pupil outcomes identified in the charter;
  3. Failure to meet generally accepted accounting principles, or engaged in fiscal mismanagement; or
  4. Violation of any provision of law.
- School district must additionally consider increases in pupil academic achievement as “the most important factor” in deciding whether to revoke the charter.

## Disclaimer

This AALRR presentation is intended for informational purposes only and should not be relied upon in reaching a conclusion in a particular area of law. Applicability of the legal principles discussed may differ substantially in individual situations. Receipt of this or any other AALRR presentation/publication does not create an attorney-client relationship. The firm is not responsible for inadvertent errors that may occur in the publishing process.



© 2017 Atkinson, Andelson, Loya, Ruud & Romo

# Question & Answer Session

## Thank You

For questions or comments, please contact:

Aaron V. O'Donnell  
(562) 653-3200  
aodonnell@aalrr.com

Sukhi K. Ahluwalia  
(562) 653-3200  
sahluwalia@aalrr.com

**aalrr**  
Atkinson, Andelson  
Loya, Ruud & Romo  
A Professional Law Corporation