



YOUNG, MINNEY & CORR, LLP
EXPERT CHARTER SCHOOL
LEGAL SERVICES

The California Public Records Act

Presented by:

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YOUNG, MINNEY & CORR, LLP

SACRAMENTO ■ LOS ANGELES ■ SAN DIEGO ■ WALNUT CREEK

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FIRM OVERVIEW

Young, Minney & Corr, LLP (YM&C) has been the leader in charter school law for over two decades, representing well over half of California's charter schools with offices in Sacramento, Los Angeles, San Diego, and Walnut Creek. The firm principals have been working with charter schools since the inception of California's Charter Schools Act in 1992.

We offer superior legal expertise, as well as the technical know-how, to allow you to effectively resolve your problems and meet all of your charter school needs.

The YM&C team of experts can assist charter schools in every aspect of charter school creation, expansion, and operation including:

- **Labor & Employment**
- **Student Rights & Discipline**
- **Special Education**
- **Board Governance**
- **Facilities**
- **Granting Agency Relations**
- **Charter Development & Renewal**
- **Charter Defense**
- **Insurance Defense**
- **Charter Litigation**
- **Independent Study**
- **Corporate Law**
- **Public Law**

We emphasize a preventative approach to the law, helping our clients anticipate legal difficulties, minimize exposure to legal claims and fees, and prevent operational challenges.

With our main office located in Sacramento, YM&C is also uniquely positioned to influence the public policy debate in California – helping shape the future of charter schools.

For more information on our team of expert attorneys and services, please visit www.mycharterlaw.com or call us at **916-646-1400**.

Sacramento Office: 655 University Avenue, Suite 150, Sacramento, CA 95825

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San Diego Office: 591 Camino De La Reina, Suite 910, San Diego, CA 92106

Walnut Creek Office: 500 Ygnacio Valley Road, Suite 190, Walnut Creek, CA 94596



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Paul C. Minney

Founder / Partner

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Paul Minney has represented charter schools in a multitude of critical areas, since the inception of the Charter Schools Act in 1992. After drafting the fifth charter in the state Paul has assisted over 500 charter schools in developing charter petitions, MOU's, facility use agreements, corporate papers and many other vital charter school documents. His areas of practice also include policy development, governance, Prop. 39 and facilities, revocation, audit defense, dispute resolution, and litigation.

Paul is a frequent speaker at CCSA sponsored events throughout California as well as a contributing author to the National Charter School Law Deskbook published by Lexis Nexis in association with the National Alliance for Public Charter Schools.

Paul continues to be a founding member of the CCSA Legal Defense Fund (an organization designed to provide high quality and comprehensive legal services to all charter schools throughout the state of California) and he was a founding organizer of the National Network of Charter School Attorneys (the goal of this organization is to provide coordinated, effective legal support for charter schools throughout the United States). Paul was also formerly an appointed member of the State Superintendent's Charter School Advisory Committee and a founding member of the American Inns of Court (Robert G. McGrath, American Inns of Court).

PRACTICE AREAS

Board Governance
Facilities
Charter Development
Charter Defense
Insurance Defense
Charter Litigation
Corporate Law
Public Law

EDUCATION

- Seattle University School of Law, cum laude (J.D.)
- University of California, Berkeley (B.A.)

REPRESENTATIVE CASES

Paul has been involved in litigating almost every seminal California charter school case since the inception of the Charter Schools Act, including but not limited to, the following recent cases:

- *Ochoa v. Anaheim City School District 11* Cal. App. 5th 209 (2017)
- *Rocketship Education v. Mt. Diablo Unified School District* (2017)
- *Alternative Schools, Inc. v. Los Angeles Unified School District* (2016)
- *Anaheim Union Hill School District & Anaheim Elementary School District v. Orange County Department of Education* (2016)
- *Mt. Diablo Unified School District v. Contra Costa County Board of Education* (2015)
- *Morgan Hill Unified School District v. Santa Clara County Board of Education* (2015)
- *Dozier-Libby Medical High School et al., v. Antioch Unified School District, et al.* (2014)
- *Magnolia Educational & Research Foundation v. Los Angeles Unified School District* (2014)
- *Newhall School District v. Acton-Agua Dulce Unified School District, et. al.* (2014)
- *Liberty Family Academy v. North Monterey USD* (Case No. H034551)
- *Bullis Charter School v. Los Altos School District* (Case No. H035195)
- *UTLA v. Los Angeles Unified School District* (2011)
- *Alfaro v Los Angeles Unified School District* (2011)
- *CSBA v. State Board of Education*
- *Shapiro v. LAUSD/Birmingham Charter High School*
- *MATES Charter School v. Conejo Valley Unified School District* (2009)
- *California School Boards Assoc. et al v. Cal. Dept of Education and State Board of Education* (2008)
- *New West Charter School v. Los Angeles Unified School District, Case No. BS 115979* (2008) *Sequoia School District v. Aurora Charter School* (2003)
- *California School Boards Assoc. v. State Board of Education and Aspire Public Schools* (2008)
- *California School Board Association v Board of Education and Aspire Public Schools* (2008)
- *CCSA Green Dot, PUC et al. v LAUSD* 2008
- *CCSA v San Diego City School District* (2005)
- *Ridgecrest Charter School v. Sierra Sands School District* (2005)
- *Richard Standley v. Office of Administrative Hearings* (2004)
- *BASIS v. Sunol Glen School District* (2004)

Kimberly Rodriguez

Senior Counsel

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As an associate at Young, Minney, & Corr, LLP, Kimberly has focused her practice on nonprofit organizations in the areas of incorporation, tax-exemption, governance, CMO organizational structuring, mergers, dissolutions, the formation of LLCs, out-of-state charter school growth and foundation development for fundraising and capital campaigns. Her areas of practice also include conflicts of interests, the California Public Records Act, and The Family Educational Rights and Privacy Act (FERPA).

Prior to joining Young, Minney & Corr, LLP, Kimberly was a civil litigation attorney with McCormick Barstow, LLP representing clients in both state and federal courts in insurance coverage and defense matters. While attending the University of California at Santa Barbara, Kimberly developed an interest in the law while interning at the Legal Aid Foundation of Santa Barbara where she assisted with a multi-tenant housing discrimination lawsuit.


Kimberly currently serves on the Board of Directors of a nonprofit corporation located in the Sacramento area serving children with special needs.

PRACTICE AREAS



Board Governance
Student Rights & Discipline
Corporate Law
Public Law

EDUCATION

- Santa Clara University of Law (J.D.)
- University of California, Santa Barbara (B.A.)



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THE CHARTER LAW FIRM

Disclaimer




- This webinar cannot substitute for personalized legal advice.
- Our advice is based upon the latest available guidance which is subject to change in this ever-evolving landscape.
- During the webinar and after we are happy to answer questions as time permits. Please use the question box.
- Sign up for our Legal Alerts on our website to receive updated information on the topics discussed today:
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YM&C Firm Overview



- Partners have over 150 years of collective experience working with charter schools
- 34 attorneys working with charter schools throughout the state in all areas of charter school law (e.g., employment/labor, special education, nonprofits, litigation, audits, facilities, etc.)
- Represent more than a majority of California's charter schools
- Conduct workshops for charter schools in all areas of legal compliance



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Purpose of the Public Records Act



Purpose

"In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (Govt. Code § 6250)

PRA compliance is mandatory for charter schools. (Ed. Code §47604.1(b)(2))



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Constitutional Amendment



California Constitution Article I, Section 3(b) ("Sunshine Amendment")

"The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."

The Sunshine Amendment clarified the rules of construction for public agencies when interpreting the PRA requiring broad construction to further the right of access to records and narrow construction if it limits the right of access.



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Public Records Defined



Public Records

*"Includes any **writing** containing information relating to the conduct of the public's business **prepared, owned, used, or retained** by any state or local agency regardless of physical form or characteristics."*
(Govt. Code § 6252)



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Public Records Defined



Writing

"Any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." (Govt. Code § 6252)



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Response Timeline



- Response within 10 days from **receipt** of the request.
- Request may be in any form (letter, email, verbal) and no need to specifically reference the PRA.
 - FOIA requests.
- 10-day deadline can be extended up to 14 additional days in "unusual circumstances."
- Must make reasonable effort to elicit additional clarifying information to identify records.



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Ten-Day Letter



Must Include:

- Whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the school;
- The basis for exemption of records and who is making the determination (privilege log not needed); and
- The date when the records will be made available (reasonable time).

Determining Time Frame:

- Do you need to search for and collect records?
- Is there large volume of records being requested?
- Do you need to consult with attorneys?
- Do you need time to compile data?
- Will documents need to be redacted before disclosure?



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Making Records Available

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- In-person inspection: Inspection of records during office hours.
 - Records requiring retrieval and redaction – set time.
- Reasonable duty to locate records;
- Exact copy unless impracticable. However, in practice it is acceptable to produce a paper or pdf copy unless a request is made for documents in "native format."
- Electronic format if maintained in this format.
- Link to website.
- Paper copies-duplication cost.
- No requirement to create records.
- No requirement to disclose records held by third-parties (even if the school has access to those records) if you do not control them. *Anderson-Barker v. Superior Court* (2019)



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Recovery of Costs



Direct Costs of Duplication: Cost of running the copy machine and expense of the person operating it. (Govt. Code §6253(b):

Does not include: Retrieval, inspection, and handling of the file.

Electronic Records: *National Lawyers Guild v. City of Hayward* (2020): Extraction ≠ Redaction

"Extraction" covers costs associated with retrieving responsive data from an unproducible government database (i.e., to extract or compile data or undertake programming to produce data).

Example: Pulling demographic data for all state agency employees from a human resources database and producing the relevant data in a spreadsheet.

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Exceptions to Disclosure



Pending litigation

(Govt. Code §6254(b)):

- Applies only during ongoing litigation.
- Prevents a litigant from using the PRA to gain earlier/ greater access to records outside of the rules of discovery.
- Settlements are generally disclosable.
- Attorneys' fees and invoices while litigation is pending.



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Exceptions to Disclosure



Personnel, medical, or similar files “the disclosure of which would constitute an unwarranted invasion of privacy.” (Govt. Code § 6254 (c))

Personnel records defined by content not location.

Evaluations are exempt.

Investigative Reports: Personnel exemption can be overridden if allegations being investigated are substantial in nature and well-founded. (*Marken v. Santa Monica-Malibu Unified School District* (2012).)



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Exceptions to Disclosure



Drafts:

- Not kept in ordinary course of business; and
- Public interest in withholding outweighs public interest disclosure. (Govt. Code §6254(a))



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Exceptions to Disclosure



Records exempted by federal or state law (Govt. Code § 6254(k)):

- Attorney-Client Privileged
 - Copying emails to attorney may not be sufficient for exemption/protection.
 - NB – investigations performed by your legal counsel
- FERPA – identifiable student records

Catchall exception: Balancing test: Public interest in not disclosing vs. public interest in disclosure. (Govt. Code § 6255(a))



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Exceptions to Disclosure



Deliberative Process Privilege: Protects pre-decisional discussions the disclosure of which would expose an agency's decision-making process discouraging candid discussion within the agency and undermining the agency's ability to perform its functions.



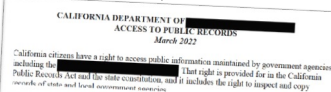
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Redaction



Redaction

- In most cases if a single record has disclosable and exempt information the record must be redacted (i.e., blacked out the exempt material and produce the remainder of the record).
- See example of redaction.
- Information to generally redact:
 - Exempt information;
 - And home address, personal email addresses, DOB, personal phone numbers, Social Security number, bank account numbers, etc.
- If redaction renders record worthless you may withhold the entire record.



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Waiver of Exemptions



Whenever a local agency discloses a public record which is otherwise exempt from disclosure, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law. (Govt. Code § 6254.5)

Some exemptions to waiver: Civil discovery; court order; and possible confidentiality agreement with other oversight agency.



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Enforcement of Rights



- To enforce rights under the Public Records Act a requester must institute proceedings for injunctive/declaratory relief or seek a writ of mandate. (Govt. Code § 6258)
- The court shall award court costs and reasonable attorneys' fees to the plaintiff should the plaintiff prevail in litigation. (Govt. Code § 6259)
 - Plaintiff prevails if suit motivates disclosure



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Enforcement of Rights



- The costs and fees shall be paid by the public agency and shall not become a personal liability of the public official. (Govt. Code § 6259)
- If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorneys' fees to the public agency. (Govt. Code § 6259)



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Enforcement of Rights



- **Reverse-PRA:** Third party writ of mandate to prevent agency from release of records to requester. (*Marken v. Santa Monica-Malibu* (2012) [teacher sought to prevent release by school district of investigation report and letter of reprimand of sexual harassment claims by student].)
 - CCP 1021.5: Prevailing party in reverse-PRA entitled to attorneys' fees if "conferring a significant benefit upon public." *City of Los Angeles v. Metropolitan Water Dist. of Southern California* (2019) [utility attempted to prevent another utility from disclosing records to new company; utility paid atty's fees to new company.]



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Common Requests



- Compensation data tied to employee name (State Controller, Transparent California, SmartProcure)
- Public bidding documentation.
- Employment contracts.
- Compliance with federal programs.
- Investigative reports.
- Requests for emails.
- Financial records of expenses.
- Vendor contracts.



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Personal Accounts



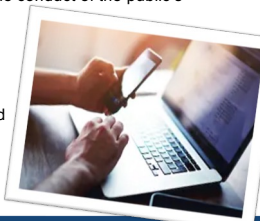
City of San Jose v. Superior Court (2017)

"A city employee's writings about public business are not excluded from CPRA simply because they have been sent, received, or stored in a personal account."

Must relate in some substantive way to the conduct of the public's business.

Factors:

- Content;
- Context and purpose;
- Audience to whom it was directed; and
- Was it prepared by an employee acting or purporting to act within the scope of his or her employment?



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Electronic Communication Best Practices



- Require employees to use school-issued email accounts for all communications touching on public business.
- Keep school-related email communication professional.
- Strongly discourage discussing public business on Facebook, Twitter, or other social medium.
- Discourage employees from using text messages to communicate about public business.
- Encourage phone or in-person communication with employees.
- Adopt records retention policy that addresses all records including email retention.



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Recommended Policies



- **Public Records Act Policy:** Provides notice of process and timeline for responding to a PRA request and the duplication costs.
- **Records Retention Policy:** Delineating the required and recommended retention period for categories of documents.
 - Email retention and deletion protocols
 - Staff training recommended



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Charter School Lawsuits



Riskin v. The Accelerated Schools:

Alleged non-compliance with six PRA requests. Court ordered TAS to submit a privilege log and supplemental declaration regarding the documents claimed as exempt from disclosure by TAS. Privilege log required to include enough detail to give requester meaningful opportunity to contest exemption (e.g., date of correspondence, to/from, subject matter).

Parents Seeking Educational E v. Bright Star Schools :

Petitioner alleged that BSS became two corporations to avoid compliance with the PRA.

Robello v. Harriet Tubman:

Plaintiff claimed noncompliance with PRA regarding request for emails. Settled with payment of atty's fees.



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Responding to Extensive Requests



- **Utilize the 14-day extension if necessary to evaluate the request:**
 - Number and type of potentially responsive records;
 - Staff capacity to review and redact records; and
 - Location of records.
- **Consider whether request is unduly burdensome. If so, ask for request to be limited to avoid objection to request.**
 - Limit timeframe of responsive documents;
 - Limit sender/recipient for emails; or
 - Request definition of terms.
- **Set reasonable production timeline:** Producing records at once vs. rolling production.



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Best Practices in Handling PRA Requests



- Approve PRA request policy;
- Confirm oral requests in writing;
- Work to refine requests to be specific and focused;
- Keep all PRA requests in one location;
- Maintain all responses in one location;
- Produce documents as single Bates stamped document;
- For multiple requests made by same requester keep a log of receipt and response dates;
- Designate point person to process PRA requests; and
- Designate specific email address to receive PRA requests.



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Non-PRA Request for Records



- **Ed. Code Section 47604.3:** Charter schools must promptly respond to all reasonable inquiries from chartering authority, COE and Superintendent of Public Instruction.
- **Request for Education Records** (FERPA, Ed. Code).
- **Request for Personnel Records** (Labor Code).
- **Form 700s:** Produce as soon as practicable and charge no more than .10 cents per page for copies.
- **Charter or MOU obligations:** check your charter and any MOU if granting agency, COE or state involved.



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Upcoming Webinars



May 18, 2022: Getting to the Finish Line: Graduation and Transition to Adulthood.

June 8, 2022: How to Start a Charter School

August 24, 2022: Effectively Manage Your Complaint Process for Students & Parents.

Aug/Sep 2022: Navigating the Charter School Facilities Landscape.

<https://mycharterlaw.com/webinar-series/>



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QUESTIONS AND RESPONSES

THANKS FOR ATTENDING TODAY!

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