



Aurora Scores Proposition 39 Court Victory

The Sequoia Union High School District must provide facilities for the Aurora Charter High School according to Judge Quentin Kopp's August 30 ruling in the first court contest over Proposition 39, a ballot initiative that will require California school districts to provide facilities for charter schools. Judge Kopp's decision is unusually strongly worded and far-reaching, and even addresses some contested charter law issues reaching beyond Proposition 39.

Background

The developers of the Aurora Charter School originally approached the Sequoia district seeking a charter in early 1999. The district urged the Aurora group to instead request a charter from the nearby Redwood City Elementary District, one of several elementary districts that "feed" into the high school district. The Sequoia district, serving some of California's most exclusive enclaves on the San Francisco Peninsula, has an exceptionally large property tax base, generates very high per-student property tax revenues, and had sought to be spared the fiscal loss by diverting the Aurora charter to the Redwood City district that is partially spared such losses under California's arcane school finance formulas. The Aurora group complied with Sequoia's suggestion, was subsequently granted a charter by the Redwood City district, and has struggled to find adequate and affordable facilities in the peninsula-area real estate market. The school's "facilities" for the past three years have ranged from parks to a warehouse. They stand in sharp contrast to Sequoia's facilities that are said to be some of the finest public school facilities in the state (see: www.seq.org/schools.html for an illustration).

Does Recent Local Bond Measure Trigger Proposition 39 Obligation?

The Sequoia district voters recently approved a local school facilities bond measure, triggering the district's obligations under the terms of Proposition 39 to provide facilities to charter schools. Last fall, the Aurora school requested facilities for the current school year. The district denied the request, arguing that the school did not have the 80 students required under Proposition 39. Sequoia also filed suit against Aurora, arguing that it is illegal for the Redwood City elementary district to grant a charter to a high school—despite the fact that the Sequoia district suggested seeking a charter from Redwood City and entered into a complex legal agreement to support it.

Aurora also filed suit, requesting the court to order the district to provide facilities. The case was argued in court on August 28. Judge Kopp, who served in the California state senate when the Charter Act was enacted and is known for his independent thinking,

issued his ruling just two days later. The 16-page ruling bristles with Kopp-isms, pokes fun at all sides, and rules in favor of Aurora on all counts except for legal fees.

Kopp ruled that:

- "An elementary district may lawfully charter a high school." Kopp dismissed the Sequoia district's argument that school districts may only charter within their traditional grade span, citing the so-called charter school "mega waiver" laws that exempt charter schools from all laws governing school districts.
- "Aurora has reasonably projected enrollment and attendance of at least 80 meaningfully interested in district students." Kopp dismissed Sequoia's challenges to the school's estimates noting that Aurora is not obligated to provide estimates "with mathematical exactness or precision" and poked fun at "the congeries of admission applications and signed statements of intent to enroll or reenroll."
- "Aurora is entitled to school facilities from the High School District."

Judge Kopp also granted Aurora's request for a "writ of mandamus." Such writs are usually only issued by courts in extraordinary circumstances, presumably reflecting the judge's strong sentiments in favor of Aurora. Kopp also took the unusual step of retaining jurisdiction in the case to enforce compliance with his decision. The district may appeal the decision and its attorneys were not available for comment at the time this article was drafted. Three other charter high schools have followed in Aurora's footsteps, have located or plan to locate in the Sequoia district, and could also be entitled to facilities if Kopp's ruling stands.

"Basic Aid" Bill Pending

In addition to the cost of providing facilities under Proposition 39, pending legislation, AB 1100, could force the district to begin sharing property taxes with charter schools. Property-rich "basic aid" districts like Sequoia generally seek to avoid chartering schools because they must share property tax revenues with them. Since Sequoia's property tax receipts are far above state funding formulas, the district receives only \$120 per ADA in general-purpose state aid called "basic aid," but is permitted to retain thousands of dollars per student the district receives from local sources that is above the usual state funding rates. By steering Aurora and other charter schools to other districts, Sequoia has largely avoided sharing its property tax wealth with charters. AB 1100 would phase-out this practice over a three-year period, requiring Sequoia and other "basic aid" districts to provide property tax funds to charter schools, potentially costing the district millions of dollars annually. AB 1100 was recently passed by the Legislature and is pending action on the governor's desk.

Though obviously a shot in the arm for Aurora, Kopp's Superior Court decision is only binding on this dispute and does not establish statewide legal precedent unless the

district appeals and an appellate court decision is issued. News of the decision, however, will hopefully encourage districts and charter schools to work out their disputes more amicably. CSDC will provide an in-depth overview of Proposition 39's detailed provisions, along with other legislative and policy updates, in its upcoming workshop "Charter School Update: Proposition 39 & 4th Annual Legal/Fiscal Briefing" (see: <http://www.csus.edu/ier/charter/workshops.html>).