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Rachel L. v. Superior Court of Los Angeles County

California Appeals Court Rules Homeschooling is Unlawful; Non-classroom Based Instruction in Charter Schools is not Affected by this Ruling

On February 29, 2008, in the case of *Rachel L. v. Superior Court of Los Angeles County*, the Second District California Court of Appeals ruled that parents do not have a constitutional right to “home school” their children. The court ruled that all children between the age of six and 18 must be enrolled in a recognized California public school or be subject to one of the State’s limited exemptions to compulsory education. The court found that Rachel L. was not enrolled in a recognized public school nor was her mother’s home schooling instruction qualified under one of the compulsory education exemptions.

Please note that this case does not address nor affect the legality of nonclassroom based education in public schools (both charter and non-charter) that is conducted in accordance with the Education Code and applicable implementing regulations.

The California Court of Appeals Decision

The case originated as part of a child welfare and abuse allegation involving Mary and Philip Long, parents who homeschooled their eight children. The Longs chose not to file a private school affidavit (which would allow the family to establish a “private school” with an enrollment consisting of only their children), and instead homeschooled their children through the Sunland Christian School, a private school in Sylmar (Los Angeles County). The court noted that Sunland Christian School employees visited the Long home only four times a year, and the Long children occasionally came to the school at the end of the year for testing. At all other times, the children were taught in the home by Mary Long, who dropped out of high school in the 11th grade and did not hold a valid California teaching certificate.

The Court of Appeals ruled that the California Education Code only provides very limited exceptions to California’s compulsory education requirement that all students must attend public school from the ages of 6 to 18 (Education Code 48200). The court also ruled that the California Constitution does not provide parents with a constitutional right to homeschool their children without filing a private school affidavit. Instead, the court argued, exemptions to California’s compulsory public school education requirement are allowed only for students who attend full-time private day school or are tutored at home by a credentialed teacher.¹ As a result, parents who homeschooled their children without filing a private school affidavit (and outside of public school enrollment) could be subject to a criminal complaint and prosecuted for the truancy of their children.

¹ There are other exceptions for short-term child actors, the mentally gifted, or leaves of absence, but they would not apply for homeschooled children

The court also refused to give weight to Philip and Mary Long's claim that they should be allowed to homeschool their children because of their religious beliefs, which are protected by the First Amendment of the United State Constitution. While the United States Supreme Court has recognized that Amish parents are allowed to remove their children from compulsory education after the eighth grade based on "deep religious conviction," the court in *Rachel L.* found that the Philip and Mary Long did not provide the "quality of evidence" about their own religious beliefs to demonstrate whether California's compulsory education laws violated their First Amendment rights.

Tangentially, while the Longs attempted to argue that Sunland Christian School was a charter school, the court dismissed this argument because the school was not part of the public school system, did not hold a valid charter, and did not employ certificated teachers.

Applicability to California Charter Schools

This case has no impact on California charter schools (or other public schools) that provide nonclassroom based instruction.

The court in *Rachel L.* noted that all students between the ages of 6 and 18 must attend a public school or fall under one of the two statutory exemptions listed above. California courts have stated that California charter schools are components of California's public school system and as such are public schools within California's public school system. *Wilson v. State Board of Education*, (1999) 75 Cal.App.4th 1125. The Charter Schools Act specifically allows charter schools to operate nonclassroom-based instructional programs (Ed. Code section 47612.5 (b)). Therefore, students enrolled in nonclassroom-based charter schools are enrolled in a California public school in compliance with the State's compulsory attendance laws.

The court in *Rachel L.* was also concerned that the children were not under the supervision of a certificated teacher and that the education they were receiving was educationally inadequate and "lousy." However, while California charter schools are generally exempt from the California Education Code, the provisions pertaining to independent study are applicable to charter schools. (See California Education Code Sections 51745-51749.3 and Section 47612.5(b)). These Code provisions include the requirement that all students enrolled in independent study be under the supervision of a certificated teacher. (Education Code Section 51747.5). In addition, nonclassroom-based charter schools must meet state standards. (Education Code Section 47605(c)). Therefore, the concerns raised by the court in the *Rachel L.* case are not present in nonclassroom based instruction in charter schools.

Recommendation

No action by charter schools is necessary at this time. The *Rachel L.* decision will likely be appealed to the California Supreme Court. There are a number of online

petitions currently being circulated to ask the California Supreme Court to “de-publish” the opinion, which would mean that it could not be used as legal authority by other California courts.

SMYM will continue to monitor this case and provide further updates.

If you have any questions about this update, please contact Lisa Corr (lcorr@smymlaw.com) or Sarah Kollman (skollman@smymlaw.com) at the Law Offices of Spector, Middleton, Young & Minney, LLP at (916) 646-1400.

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