

Louisiana Supreme Court Issues Landmark School Decision

McGlinchey Labor & Employment Alert

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The Louisiana Supreme Court issued a landmark decision on March 13, 2018, upholding the constitutionality of the allocation of state and local Minimum Foundation Program (MFP) funding to New Type 2 charter schools pursuant to La. Const. art. VIII, § 13. *Iberville Parish Sch. Bd. v. Louisiana State Bd. of Elementary & Secondary Educ.*, No. 2017-C-0257 slip op. (La. March 13, 2018).

Under La. Const. art. VIII, § 13(B), the legislature is required to “fully fund the current cost to the state” of a “minimum foundation program of education in all public elementary and secondary schools[.]” and the “funds appropriated shall be equitably allocated to parish and school systems[.]” As Louisiana’s principal funding source for public elementary and secondary education, the MFP formula is developed and adopted by the Louisiana Board of Elementary and Secondary Education (BESE) and takes into consideration the number and characteristics of students in each school district.

Plaintiffs filed these consolidated lawsuits seeking injunctive and declaratory relief, arguing that MFP funds cannot be diverted to New Type 2 (state-authorized) charter schools because La. Const. art. VIII, § 13(B) restricts MFP funds to “parish and school systems.” Defendants, however, asserted that New Type 2 charter schools must be funded by the state pursuant to La. Const. art. VIII, § 13(B) because they are public schools.

Reversing the appellate court’s ruling below, the Louisiana Supreme Court held in a 5-2 ruling that New Type 2 charter schools are in fact public schools: “While there is no definition of ‘public elementary and secondary schools’ in the constitution, our legislature has expressed that charter schools are ‘independent public school[s].’ La. R.S. 17:3973(2)(a).” The Court based its reasoning in part on the classification of both Louisiana State University and Southern University Lab schools—neither of these schools are part of a city or parish school system, but both are public schools.

The Court stated that denying MFP funding because the school is not within the jurisdiction of a parish or city school board could potentially have adverse consequences to other charter schools, not just Type 2s, and lead to absurd consequences because some public schools would receive funds while other public schools would not.

The Court went further in its analysis to hold that New Type 2 charter schools are entitled to inclusion of local funds in the MFP formula. The Court reasoned that the MFP formula is meant to fund public schools—including New Type 2 charter schools. Local taxes specifically for the purpose of supporting public schools should therefore be included in the MFP formula for New Type 2 charter schools.

The impact of this groundbreaking decision by the Louisiana Supreme Court cannot be overstated, considering more than \$70 million a year in educational funding was at stake, and signifies the forward-thinking views of the Court. With this case, the Louisiana Supreme Court clearly states: charter schools are public schools to be allotted state and local MFP funding.

Although the precise holding and constitutional interpretation by the Court is specific to Louisiana, federal and state agencies and courts across the nation have been closely monitoring this case as a barometer for how public schools will be defined by their courts and how funding of charter schools will be interpreted. The Louisiana Supreme Court’s decision is persuasive in a spectrum of related issues. For example, the National Labor Relations Board has consistently held that charter schools, which are operated through private boards of directors, are in fact private—not public—entities. As a result, charter schools must comply with the obligations imposed by the National Labor Relations Act to recognize and bargain with labor unions rather than the more flexible obligations imposed under Louisiana law. The Iberville holding will be insightful for the Fifth Circuit Court of Appeals, which is presently considering the Labor Board’s previous rulings on this issue, as well as future labor relations locally and nationally.

Louisiana has 42 Type 2 charter schools that serve approximately 16,000 students. Without the Court’s decision that Type 2 charter schools are public schools, MFP funding to those schools would have been severed.

McGlinchey Stafford Member Jay O’Brien was the trial lawyer in this case.

Stay tuned for further updates regarding the national impact of this decision.

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