

Adult Charter School Knowledge Center

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The Legal Validity and Constitutional Necessity for California Adult-Serving Charter Schools

A Legal Research Report

Jacob J. Walker, 9/29/2017

Background

There have been those who have said that California adult-serving charter schools use a “loophole” in the law, and question their K-12 funding.

But the Legislature specifically allowed exemptions to serve adults in charter schools in California Education Code § 47612.1, and this exemption is compatible with providing adults equal protection under the law to receive their right to a K-12 education.

Research

California’s Legal Right to Education

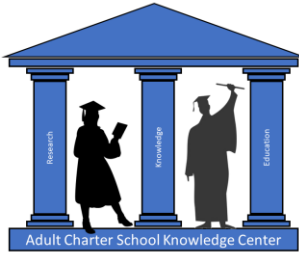
As early as 1874, the California Supreme Court held that education was “a right—a legal right—as distinctively so as the vested right in property owned is a legal right, and as such it is protected, and entitled to be protected by all the guarantees by which other legal rights are protected and secured to the possessor”¹

And in *Slayton v. Pomona Unified School District* the 2nd Appellate District Court of Appeals explained that “California has extended the *right* to an education by virtue of two constitutional provisions, one calling for legislative encouragement of education (Cal. Const., art. IX, § 1) and the other requiring the Legislature to create a system of “free schools” in each district of the state (Cal. Const., art. IX, § 5).”²

Section 1 of California Constitution Article IX states: “A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.”

And Section 5 of Article IX says: “The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.”

And Section 6 of Article IX explains a little about what type of schools should be established in the system: “The Public School System shall include all kindergarten schools, elementary schools, secondary schools, technical schools, and State colleges, in addition, the school districts and the other agencies authorized to maintain them.”



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Should One Lose a Right with Age?

While nearly every case which revolved around California's legal right to education has focused on children, should one suddenly lose their right to an education, because they have become an adult? The U.S. Supreme Court has generally ruled, that age does not preclude one to equal protection under the law. For example, minors as well as adults should receive due process.

Further in *Levi vs. O'Connell*, the Third District California Court of Appeal, it was determined that age was not the determining factor for one having a Right to Education, but that the Right to Education was about the level of education, specifically that it extended only to K-12 education³.

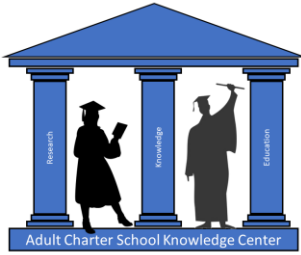
But of course, age is commonly used in law. We can vote at age 18, we can drink alcohol at age 21 (for better or for worse). And this is appropriate, when age is a proxy for some other characteristic that cannot easily be measured, such as maturity level. But is age any type of appropriate proxy for denial of a right?

When it comes to the Equal Protection Clause, the courts have rightly ruled that age is not a suspect classification⁴, and thus equal protection claims based on age discrimination are valid only when there is no rational basis for that discrimination⁵. One might claim, that there is a rational basis for denying adults a right to education because of the additional cost burden to the state, but the courts have generally thrown out the cost argument when it comes to the right to at least receiving education at a minimal level.

Sections 1 and 5 of Article IX do not discuss age, and some might assume that the discussion at the time was only about children. But the San Francisco Board of Education formed the first public adult school in 1856, which included adult literacy, and was tuition free⁶. Thus, surely this was known of when the current California Constitution was adopted in 1879, which set forth most of the California education system we know of today. Further, Education Code clearly shows that the basic education of adults is included in the "system of common schools" when it states: "The secondary schools of the state are designated as high schools, technical schools, and adult schools." [EC § 52]

Further, looking at the original rationale for providing a legal right to education in Section 1 is that: "A general diffusion of knowledge and intelligence [is] essential to the preservation of the rights and liberties of the people" This does not change with age, and as one gains additional legal rights such as the right to vote as an adult, it can be argued that it is more critical for adults to gain an appropriate general diffusion of knowledge and intelligence to support the preservation of the rights and liberties of the people.

In addition to the arguments from California's Constitution, the Universal Declaration of Human Rights, states in Article 26, Clause 1: "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages."⁷ With the United States being a signatory to the Declaration, this also has legal weight. And it has been argued by UNESCO, that this right extends to Adult Education.⁸



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Conclusion

California has a long history of supporting a legal right to K-12 education, and extending this right to adults in the form of public adult education. To not also allow adults to have access to the benefits of independent charter schools, including a charter school's ability to more nimbly focus on the needs of their clientele, would be a potential issue of equal protection under the law, given that there does not seem to be a rational distinction between an adult's need for K-12 education versus that of a child; and in fact, there are good arguments that adults need this even more than kids, and the public good is greater.

But, this is not to say that education code and programs for adult-serving charter schools need to be identical as those for children. Education Code § 47612.1 rightly allows adult-serving charter schools only when they focus on career training in partnership with an appropriate Federal or State program.

Thus, while one can make an argument that laws and regulations about California adult-serving charter schools could be improved, it is hard to make a legitimate case that adult charter schools should not exist.

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Works Cited

¹ Ward v. Flood, 48 Cal. 36, (1874).

² Slayton v. Pomona Unified School Dist., 161 Cal. App. 3d 538 (1984).

³ Levi v. O'connell, 50 Cal. Rptr. 3d 691 (2006).

⁴ Camacho v. Puerto Rico Ports Authority, 369 F. 3d 570 (2004).

⁵ Christie v. Marston, 451 F. Supp. 1142 (1978).

⁶ CALIFORNIA ADULT EDUCATION: ONE HUNDRED FIFTY YEARS, (2005), <http://www.caadulthoodhistory.org/video> (last visited Oct 21, 2016).

⁷ UNIVERSAL DECLARATION OF HUMAN RIGHTS - ARTICLE 26, CLAUSE 1, (1948), <http://www.un.org/en/universal-declaration-human-rights/> (last visited Sep 20, 2017).

⁸ UNESCO, RECOMMENDATION ON ADULT LEARNING AND EDUCATION (2015), http://portal.unesco.org/en/ev.php-URL_ID=49354&URL_DO=DO_TOPIC&URL_SECTION=201.html (last visited Sep 18, 2017).