



Santa Ana Unified School District

Stefanie P. Phillips, Ed.D.
Superintendent of Schools

March 8, 2019

Orange County School of the Arts Charter
Steve Wagner
Vice President, Chief Operations Officer
1010 N. Main St
Santa Ana, CA 92701

RE: Contribution to District-wide Special Education Costs

Dear Mr. Wagner:

Education Code section 47646, subdivision (c), requires the local educational agency that approved a charter school that is deemed a public school of that agency for purposes of special education to ensure that the charter school also contributes an equitable share of its charter school block grant funding to support districtwide special education instruction and services, including, but not limited to, special education instruction and services for pupils with disabilities enrolled in the charter school. This letter is to notify you of required contribution from Orange County School of the Arts (OCSA) to Santa Ana Unified School District's special education costs, and to request payment.

Since OCSA's charter was approved in 2000, the District has spent its locally generated funding on districtwide special education instruction and services above and beyond the amount of federal and state funding it generates for all students, including for those enrolled at OCSA. However, OCSA has not contributed its share of its funding to support districtwide special education costs as required pursuant to Ed Code Section 47646. Starting this school year, the District will annually invoice OCSA for its required contribution to ensure it is made.

We will be contacting you to set up a meeting to discuss your contributions for current and prior years, as we hope to reach an agreement that ensures the required, equitable contribution to districtwide special education costs is made.

Sincerely,

A handwritten signature in black ink, appearing to read "Stefanie Phillips".

Stefanie Phillips, Ed.D.
Superintendent of Schools

cc: Board of Education
Dr. Stekol, Deputy Superintendent, Administrative Services
Dr. Helguera, Assistant Superintendent, Special Education/SELPA

1601 East Chestnut Avenue, Santa Ana, CA 92701-6322 (714) 558-5501

BOARD OF EDUCATION

Valerie Amezcua, President • Rigo Rodriguez, Ph.D., Vice President
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SANTA ANA UNIFIED SCHOOL DISTRICT

INVOICE

ACCOUNTING DEPARTMENT

1601 E. CHESTNUT ST.
SANTA ANA, CA. 92701
PHONE 714-558-5825 FAX 714-558-5625

DATE:
March 25, 2019

INVOICE #
A2257
page 1

Bill To:
ORANGE COUNTY SCHOOL OF THE ARTS
1010 N. MAIN ST
SANTA ANA, CA 92701

For:
SELPA EXCESS COST
FOR 2002 - 2019

DESCRIPTION	AMOUNT
SELPA EXCESS COSTS FOR YEARS 2002 - 2019 DUE TO SANTA ANA UNIFIED SCHOOL DISTRICT	
2002-2003	213,905.00
2003-2004	255,261.00
2004-2005	333,947.00
2005-2006	448,788.00
2006-2007	713,163.00
2007-2008	734,791.00
2008-2009	704,904.00
2009-2010	522,207.00
2010-2011	901,108.00
2011-2012	997,841.00
2012-2013	1,115,580.00
2013-2014	1,250,411.00
<i>amounts continued on next page</i>	
TOTAL	

PLEASE MAKE CHECK PAYABLE TO SANTA ANA UNIFIED SCHOOL DISTRICT
ATTN: ACCOUNTING DEPARTMENT

THANK YOU FOR YOUR SUPPORT!

SANTA ANA UNIFIED SCHOOL DISTRICT

INVOICE

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page 2

Bill To:
ORANGE COUNTY SCHOOL OF THE ARTS
1010 N. MAIN ST
SANTA ANA, CA 92701

For:
SELPA EXCESS COST
FOR 2002 - 2019

DESCRIPTION	AMOUNT
SELPA EXCESS COSTS FOR YEARS 2002 - 2019 DUE TO SANTA ANA UNIFIED SCHOOL DISTRICT	
2014-2015	1,441,380.00
2015-2016	1,936,728.00
2016-2017	2,186,215.00
2017-2018	2,566,871.00
2018-2019	3,170,229.00
TOTAL	\$ 19,493,329.00

PLEASE MAKE CHECK PAYABLE TO SANTA ANA UNIFIED SCHOOL DISTRICT
ATTN: ACCOUNTING DEPARTMENT

THANK YOU FOR YOUR SUPPORT!

SANTA ANA UNIFIED SCHOOL DISTRICT

INVOICE

ACCOUNTING DEPARTMENT

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PHONE 714-558-5825 FAX 714-558-5625

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March 25, 2019

INVOICE #
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page 3

Bill To:
ORANGE COUNTY SCHOOL OF THE ARTS
1010 N. MAIN ST
SANTA ANA, CA 92701

For:
SELPA EXCESS COST
FOR 2002 - 2019

DESCRIPTION	AMOUNT
<p>The excess special education costs were billed per the formula included in the MOU and detailed below:</p> <p>Expenditures in excess of revenues multiplied by the ratio of charter school to SELPA ADA.</p> <p>Revenues</p> <ul style="list-style-type: none">+ Special Education Apportionment+ Special Education Mental Health+ Special Education Local Assistance Entitlements (IDEA) <p>Expenditures</p> <ul style="list-style-type: none">- Total Special Education Costs- Special Education Transportation Costs- Reimbursed Provider Costs	
TOTAL	\$ -

PLEASE MAKE CHECK PAYABLE TO SANTA ANA UNIFIED SCHOOL DISTRICT
ATTN: ACCOUNTING DEPARTMENT

THANK YOU FOR YOUR SUPPORT!

OCSA SPECIAL ED BILLBACK SAUSD

FY	ADA	\$647 PER ADA	SAUSD BILLBACK	DIFF
18-19	2,085.00	1,348,995	900,000	448,995
17-18	2,060.56	1,333,182	899,358	433,824
16-17	2,071.91	1,340,526	684,328	656,198
15-16	2,006.45	1,298,173	536,605	761,568
14-15	1,846.78	1,194,867	355,655	839,212
13-14	1,835.08	1,187,297	388,600	798,697
				3,938,494

provided 3/28/10 by Ralph Opacic

LAW OFFICES OF
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IRVINE, CALIFORNIA 92614-8088

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DANIELLE M. BOYD
LESLIE J. KIM

March 26, 2019

TELEPHONE: (949) 474-5040

TELECOPIER: (949) 474-8540

m.chidester@californiaschoollaw.net

*A PROFESSIONAL CORPORATION

REF. OUR FILE

OCSA-80

VIA ELECTRONIC & CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Santa Ana Unified School District
1601 East Chestnut Avenue
Santa Ana, CA 92701-6322

Attention: Dr. Stefanie Phillips
Superintendent
stefanie.phillips@sausd.us

Re: Orange County School of the Arts' Response to
Your Correspondence of March 8, 2019

Dear Dr. Phillips:

This office is counsel to the Orange County School of the Arts ("OCSA").

Since approval of its initial charter in the year 2000, OCSA and the Santa Ana Unified School District ("SAUSD") have enjoyed a cordial, respectful relationship. Thus, OCSA leadership is taken aback at the SAUSD's utter disregard of its obligations under OCSA's charter with respect to SAUSD's responsibility to provide 15 months advance written notice before beginning to impose sharing of SAUSD's special education excess costs, particularly in light of the fact that OCSA's special education costs have been consistently less, on an annual basis, than the income that SAUSD has annually received from OCSA for providing special education services.

Your March 8, 2019 correspondence and the SAUSD's invoice dated March 20, 2019 for "SELPA Excess Cost for 2002-2019" are contrary to the express language of OCSA's charter as granted and renewed on multiple occasions by the SAUSD. Your March 8, 2019 correspondence admits, "*Starting this school year*, the SAUSD will annually invoice OCSA for its required contribution to ensure it is made."

The express language of OCSA's existing charter at page 19 states:

"School Contribution of Equitable Share of OCSA Funding:

Dr. Phillips
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Page 2

Additionally, OCSA shall contribute a pro-rata share of its charter school funding to support the District's unfunded special education costs ('general fund support'). *The requirement that OCSA pay this general fund support, as specified in this Section of the Charter, shall go into effect upon the District providing OCSA 15 months' written notice that the District will be assessing general fund support from OCSA.*" (Emphasis added.)

OCSA understands the SAUSD's right to invoke payment for the period commencing July 1, 2020 under the charter language and considers the March 8, 2019 correspondence to be the required notice pursuant to the above section.

In addition to neglecting to provide the required 15 months' notice, the SAUSD has also failed, until March 8, 2019, to comply with several of SAUSD's other obligations under the language of OCSA's charter:

"At the end of each fiscal year, the District shall calculate OCSA's pro-rata share of the District-wide general fund support for that year as calculated by the total unfunded special education costs of the District (including those costs attributable to OCSA and any/all other charter schools for which the District provides LEA services in the same or similar manner) divided by the total number of District ADA (including OCSA students and students from any/all other charter schools for which the District provides LEA services in the same or similar manner) and multiplied by the total number of OCSA ADA (ADA calculation from P2). OCSA ADA shall include all students, regardless of home district.

The District shall calculate the amount of OCSA's share of the general fund support upon receipt of the certified P2 reporting data. The District shall provide OCSA with documentation as to the calculation of OCSA's share of general fund support and allow OCSA an opportunity to provide input and respond to the calculation prior to invoicing OCSA for the prior year. The District shall then invoice OCSA for its share of the general fund support.

...

The District shall provide an estimate of OCSA's share of the general fund support for the following year by June 30 of each year for budgeting purposes." (Emphasis added.)

The SAUSD's Invoice #A2257 dated March 20, 2019 purports to charge OCSA for excess costs commencing in school year 2002-2003, seeking a total payment of \$19,493,329.00. Even if

Dr. Phillips
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the parties had not contracted for the 15 months advance notice, SAUSD's invoice is time-barred by the applicable statutes of limitation from seeking payment for the time period reaching back to school year 2002-2003.

Further, the SAUSD invoice falsely claims, "*The excess special education costs were billed per the formula included in the MOU and detailed below...*" OCSA does not have a MOU with the SAUSD; instead, the parties are bound by the language of the charter.


CONCLUSION

For the above reasons, no payment is due to the SAUSD by OCSA for the time period through school year 2018-2019. OCSA considers the March 8, 2019 correspondence as the SAUSD's notice pursuant to the terms of the charter that OCSA will contribute to SAUSD's unfunded special education costs for the period commencing July 1 of the 2020-2021 school year.

We request that the SAUSD immediately withdraw the March 8, 2019 correspondence and its unfounded March 20, 2019 invoice.

Be advised that if the SAUSD attempts to offset *any* of the amounts set forth in SAUSD's March 20, 2019 invoice against the SAUSD's next succeeding in-lieu property tax apportionment payable to OCSA, OCSA will have no alternative but to file a Petition for Writ of Mandate and seek an injunction to enforce its legal rights under its charter.

Very truly yours,

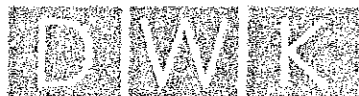

Margaret A. Chidester

MAC:tg

cc: Orange County School of the Arts Board of Directors

Dr. Ralph Opacic
OCSA President and Executive Director

Mr. Steven Wagner
OCSA Chief Operations Officer and Vice President of Business



DANNIS WOLIVER KELLEY

Attorneys at Law

SARAH L.W. SUTHERLAND

Attorney at Law

ssutherland@DWKesq.com

San Diego

April 15, 2019

VIA FACSIMILE AND U.S. MAIL

Margaret A. Chidester
Margaret A. Chidester & Associates
17762 Cowan, First Floor
Irvine, CA 92614

Re: Orange County School of the Arts / Special Education Contribution
Our file 7105.10319

Dear Ms. Chidester:

Our office represents the Santa Ana Unified School District ("District") with respect to matters regarding the above-referenced charter school. Please direct all future correspondence to my attention.

This is in response to your letter dated March 26, 2019 and Steven Wagner's April 8, 2019 letter, both to Dr. Phillips, regarding the Orange County School of the Arts' ("OCSA") statutory obligation to contribute an equitable share of its general fund to district-wide special education costs pursuant to Education Code section 47646, subdivision (c) ("Equitable Share"). The District maintains OCSA is responsible to contribute the amount identified in the March 20, 2019 invoice provided to OCSA, and nothing in either letter provides authority to the contrary. The District also remains willing to meet and hopes to reach resolution of this issue, as it does not believe either party will ultimately benefit from litigation.

The District's letter of March 8, 2019 referencing OCSA's obligation under Education Code section 47646 is not inconsistent with OCSA's charter. The charter explicitly acknowledges OCSA's statutory duty: "In accordance with Education Code section 47646, as a charter school that is deemed a public school of the District for purposes of special education, OCSA is required to contribute 'an equitable share of its charter school block grant funding to support district-wide special education instruction and services.'" (Charter, p. 17.) Conditions not consistent with law are not enforceable, and OCSA's position is contrary to public policy.

OCSA also seeks to enforce some provisions of its charter while avoiding others, such as the provision allowing for withholding of the contribution if not paid following an invoice. Further, OCSA was able to determine its Equitable Share without any

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Margaret A. Chidester
Margaret A. Chidester & Associates
April 15, 2019
Page 2

District assessment or invoice based on OCSA's inclusion of the Equitable Share formula within its charter petition, coupled with publicly available information regarding the District's total ADA and special education contribution from its general fund. OCSA was, and is, aware of its statutory obligation to contribute to District wide special education cost and it cannot do so through special education funding withheld in compliance with law and the charter. Absent an agreement to the contrary, the District otherwise intends to offset the amounts owed by withholding in lieu property tax transfers as of 30 days after the invoice per OCSA's charter. (p.20.) The next transfer of in lieu property taxes is on May 15, 2019.

The District proposes to arrange a meeting with OCSA before then to discuss OCSA's Equitable Share contribution for the current 2018-2019 school year and resolving the parties' dispute in a way that meets both parties' obligations and interests. The District is available to meet with you and your client. Please contact us to schedule a mutually agreeable date.

Sincerely,

DANNIS WOLIVER KELLEY



Sarah L.W. Sutherland

SLS:AER:cc

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April 16, 2019

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m.chidester@californiaschools.net

*A PROFESSIONAL CORPORATION

REF. OUR FILE

OCSA – 80.13

VIA U.S. MAIL & ELECTRONIC MAIL

Dannis Woliver Kelley
750 B Street, Suite 2310
San Diego, CA 92101
ssutherland@DWKesq.com

Attention: Ms. Sarah L.W. Sutherland

Re: SAUSD Demand For "Equitable Share" of Excess Special Education Costs
From Orange County School of the Arts

Dear Ms. Sutherland:

Thank you for your correspondence of April 15, 2019 concerning the above referenced matter. Be advised that Orange County School of the Arts ("OCSA") vigorously disputes your representations concerning any present or past obligations to pay Santa Ana Unified School District ("SAUSD") an "equitable share" of special education excess costs.

Contrary to your representation, it is SAUSD, not OCSA, which seeks to selectively enforce certain provisions of the charter. For example, SAUSD ignores the express language of the charter concerning when the obligation arises to pay an equitable share of the District's unfunded special education costs:

"The requirement that OCSA pay this general fund support, as specified in this section of the Charter, shall go into effect upon the District providing OCSA fifteen (15) months written notice that the District will be assessing general funds support from OCSA."

Further, had it satisfied the 15 month notice requirement, the District has repeatedly breached its obligations under the charter. It has failed to calculate OCSA's pro-rata share of District-wide special education excess costs annually. It has failed to invoice OCSA annually. The District has failed to provide an estimate of OCSA's share of the excess costs "for budgeting purposes" annually. The District has further failed to annually provide OCSA with documentation as to the calculation of amount claimed to be owed and has never allowed OCSA

LAW OFFICES OF
MARGARET A. CHIDESTER & ASSOCIATES

Ms. Sarah L.W. Sutherland
April 16, 2019
Page 2

“an opportunity to provide input and respond to the calculation prior to invoicing OCSA for the prior year.” Exacerbating such conduct, the District ignores the effect of applicable statutes of limitation. Finally, you offer no authority for the claim that the Board approved charter language is somehow contrary to public policy. On the contrary, the Board’s approval of the 15 month notice provision is plainly authorized by Education Code sections 35160 – 35160.2.

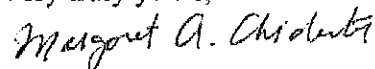
Should SAUSD withhold OCSA’s in lieu property tax transfers, OCSA will have no alternative but to litigate to enforce its rights under the charter.

Notwithstanding the significant difference in positions of our respective clients, we concur that a meeting pursuant to Evidence Code §1152 may be beneficial towards resolving this issue.

We propose to meet at our office on the morning of Tuesday, April 23, 2019 or at any mutually convenient time on Wednesday, April 24, 2019.

We look forward to your response.

Very truly yours,



Margaret A. Chidester

MAC:kn

cc: Dr. Ralph Opacic
Executive Director

Mr. Steven Wagner
Chief Operations Officer