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Orange County School of the Arts

9 Exempt from Filing Fees – Gov. Code § 6103.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

14 30-2019-01068167-CU-WM-CJC

15 ORANGE COUNTY SCHOOL OF THE  
ARTS, a California non-profit public benefit  
16 corporation,

17 Petitioner/Plaintiff,

18 v.

19 SANTA ANA UNIFIED SCHOOL  
DISTRICT; BOARD PRESIDENT VALERIE  
AMEZCUA; BOARD VICE PRESIDENT  
20 RIGO RODRIGUEZ; BOARD CLERK  
ALFONSO ALVAREZ; BOARD MEMBER  
21 JOHN PALACIO,

22 Respondents/Defendants.

Case No. Judge David A. Hoffer

**ORANGE COUNTY SCHOOL OF THE  
ARTS' VERIFIED PETITION FOR WRIT  
OF MANDATE AND COMPLAINT**

[Code of Civil Procedure §§ 1085, 1094.5,  
Education Code §§ 47635, 47646, 56205,  
Breach of Charter Agreement, 42 U.S.C. §  
1983 (14th Amendment to United States  
Constitution – Due Process) Declaratory and  
Injunctive Relief]

Action Filed: May 7, 2019  
Trial Date: None Set

23  
24 Petitioner and Plaintiff Orange County School of the Arts (“OCSA”), brings this Verified  
25 Petition for Writ of Mandate and Complaint (“Petition”) against Respondent/Defendants Santa  
26 Ana Unified School District (the “District”) and its current Board Members as individuals, and  
27 acting in their official capacities for the District as OCSA’s charter school chartering authority and  
28

1 local educational agency (“LEA”) administering the District’s Special Education Local Plan Area  
2 (“SELPA”).

### 3 INTRODUCTION

4 1. In March 2019, the District informed OCSA for the first time of its contention that  
5 from 2002 to the present, OCSA had failed to contribute “equitable share” support for District-  
6 wide special education costs in excess of District revenues (“general fund support”), and thus  
7 submitted an invoice to OCSA in the amount of \$19,493,329, purportedly representing OCSA’s  
8 shortfalls in equitable share contributions each year from 2002 through 2019 (the “Demand”).

9 2. Not surprisingly, the District’s sudden Demand on OCSA for retroactive recovery  
10 of 17 years-worth of alleged “equitable share” shortfalls violates California’s Charter Schools Act  
11 (“CSA”), multiple requirements of the charter agreement between the District and OCSA, and  
12 OCSA’s constitutional right to due process, among other legal prohibitions described herein.

13 3. Nonetheless, on April 15, 2019, the District informed OCSA that commencing on  
14 May 15, 2019, the District would begin to “offset” its Demand by withholding from OCSA each  
15 monthly transfer of in lieu property tax payments, averaging approximately \$500,000 each month  
16 and representing approximately 30% of OCSA’s state funding (“Monthly Transfers”). The  
17 District’s threatened action violates its mandatory duty to make Monthly Transfers under  
18 Education Code section 47635 and the parties’ charter agreement, among other legal prohibitions.

19 4. OCSA thus seeks by this action a writ of mandate and judgment directing the  
20 District to set aside and void its unlawful Demand, along with temporary and permanent injunctive  
21 relief enjoining the District from withholding OCSA’s Monthly Transfers.

### 22 THE PARTIES AND STANDING

23 5. Petitioner/Plaintiff OCSA is a California non-profit public benefit corporation,  
24 authorized to do and doing business in Santa Ana, California. OCSA operates the Orange County  
25 School of the Arts charter school located at 1010 North Main Street, Santa Ana, California,  
26 serving more than 2,200 students in grades 7-12 from over 100 cities throughout Southern  
27 California.

28





1 opportunities for teachers; expand school choices within the public school system; hold schools  
2 accountable; and “provide vigorous competition within the public school system to stimulate  
3 continual improvements of all public schools.” (§ 47601; *Calif. School Bds. Assn., supra*, at 1306.)

4 18. OCSA is a crowning success story. OCSA has received numerous honors and  
5 recognition for excellence in both arts and academic education. As noted in its 2015 Renewal  
6 Charter, OCSA’s academic recognitions include: one of the top three public high schools in  
7 Orange County (Orange County Register, 2014), A California Distinguished School (2005, 2009,  
8 2013), A U.S. Department of Education National Blue Ribbon School (1998, 2006), America’s  
9 Best High Schools (Newsweek 2009, 2010, 2013, 2014), Best High Schools in America (US News  
10 & World Report (2008, 2009, 2010, 2011, 2012, 2013), and the Daily Beast in 2014 ranked OCSA  
11 the #52 best Academic High School in America, #14 in the West and #6 in California.

12 19. Once approved by the chartering authority, charter schools operate independently,  
13 but are subject to public oversight by the chartering authority. Pursuant to the CSA’s  
14 requirements, each year since its formation, the District as OCSA’s chartering authority has  
15 monitored OCSA’s fiscal condition and academic performance, including annual reviews of  
16 OCSA’s budgets and financial plans (§§ 47604.32, 47604.33) and charged OCSA for these  
17 oversight services. (§ 47613.)

18 20. The CSA declares that charter schools “are part of the Public School System”  
19 (§47615(a)(1)) and, as such, entitled to full and fair funding “equal to the total funding that would  
20 be available to a similar school district serving a similar pupil population.” (§§ 47630(a),  
21 47615(a)(3).) Public charter schools receive funding in the same way as traditional public schools  
22 on a per pupil basis based on the average daily attendance of students they serve (“ADA”). Thus,  
23 public charter schools and traditional district-run public schools are in direct competition for  
24 students and dollars. Vigorous competition is explicit in the statutory design of the CSA. (§  
25 47601.)

26 21. Because of the “complicated relationship” between charter schools and their  
27 chartering authority, their respective rights and obligations, particularly with respect to funding  
28 matters, are strictly defined and enforced by the mandates of the CSA and the charter which

1 constitutes a contract between the charter school and its chartering authority. The great bulk of  
2 OCSA's funding, like other charter schools, derives from a combination of grant ADA funding  
3 supplied directly from the state and from the local chartering authority's (*i.e.* the District's)  
4 monthly transfers of in lieu property tax payments. The District's Monthly Transfers to OCSA  
5 average approximately \$500,000 and constitute approximately 30% of OCSA's state funding.

6 **B. The District's SELPA**

7 22. In 1974, the California State Board of Education adopted the California Master  
8 Plan for Special Education. This statewide plan outlined the process of developing a quality  
9 educational program for disabled students in California. The Master Plan required that all school  
10 districts and county offices of education join together in geographical regions in order to develop a  
11 regional special education service delivery system. The service regions were named Special  
12 Education Local Plan Areas ("SELPA's"). Each SELPA is required each year to develop a local  
13 plan describing how it will provide special education services.

14 23. The District is the local education agency ("LEA") responsible for administering  
15 the District's SELPA. As such, the District must comply with numerous substantive and  
16 procedural requirements each year in proposing and ultimately adopting its local plan. Each year,  
17 the District must submit its proposed local plan to the State's Superintendent describing, among  
18 other things, the local plan area's allocation plan, all sources of revenues by revenue source  
19 received, a breakdown of funds to each local educational agency within the SELPA, and a  
20 description of projected total special education expenditures. (§56205(b).) Moreover, each  
21 SELPA member, particularly those identified as a source of revenue, are afforded due process  
22 protections to comment and object to the proposed local plan (including the proposed budget) in at  
23 least two respects. First, the annual budget for the District's proposed local plan must be adopted  
24 at a duly noticed public hearing. (§56205(b)(1).) Second, the proposed local plan submitted to the  
25 Superintendent must include a description of dispute resolution processes to resolve disputes over  
26 "the distribution of funding, the responsibility for service provision, and other governance  
27 activities specified within the local plan." (§56205(b)(6).)

28

1           24.     OCSA has at all times been part of the District’s SELPA. Under Section 47646(c),  
2 each charter school within a SELPA must contribute an “equitable share” of its block grant  
3 funding to special education instruction and services pursuant to a local plan established under the  
4 substantive and procedural requirements of Section 56205.

5           25.     However, since OCSA’s formation in 2000, the District and OCSA agreed to  
6 allocate responsibilities and costs for special education services as follows:

- 7           • First, OCSA employs its own Special Education Coordinator and Resource  
8           Specialist(s) to provide special education services to OCSA students; and
- 9           • Second, the District reimburses OCSA on a quarterly basis for OCSA’s actual costs  
10          from special education funding the District receives from the State on OCSA’s  
11          behalf, and retains any remaining State funding.

12          26.     Under this agreement, since 2000 the District has retained in excess of \$11.2  
13 million of state special education funding provided on OCSA’s behalf over and above the amounts  
14 reimbursed to OCSA (the “Windfall”).

15          27.     During negotiations between OCSA and the District prior to OCSA’s 2010-2015  
16 Charter Renewal, the District raised the prospect, on a going forward basis, of OCSA annually  
17 contributing approximately \$1,000/student (“encroachment”) towards the District’s unfunded  
18 District-wide special education services (“general fund support”)

19          28.     OCSA rejected this proposed encroachment, which amounted to approximately  
20 \$1.5 million a year, on the grounds that it was financially infeasible, and because the District’s  
21 annual Windfall, at a minimum, constituted OCSA’s “equitable share” general fund support.  
22 OCSA further informed the District that it would be forced to leave the District’s SELPA if the  
23 District required such annual encroachments from OCSA.

24          29.     Accordingly, OCSA and the District agreed as follows, as reflected in the 2010-  
25 2015 Charter Renewal and operative 2015-2020 Charter Renewal. First, in the unlikely event that  
26 OCSA’s actual costs for special education services ever exceeded special education revenues  
27 provided by the State on its behalf, OCSA would not look to the District to cover that shortfall.

28

1 Second, the District would not seek from OCSA an encroachment for “general fund support”  
2 unless it first satisfied four conditions:

- 3 • The District must provide OCSA *15 months written notice* that it will be assessing  
4 general fund support;
- 5 • The District must calculate OCSA’s proposed pro-rata share of general fund  
6 support *at the end of each fiscal year for that year*;
- 7 • The District must provide OCSA *with documentation* supporting the District’s pro-  
8 rata calculation and *allow OCSA an opportunity to provide input and respond*  
9 *prior to invoicing OCSA for the prior year*; and
- 10 • The District must have *provided an estimate of OCSA’s share* of the general fund  
11 support *by June 30* of the preceding year for budgeting purposes (collectively, the  
12 “Conditions Precedent”).

13 **C. The District’s Unlawful Acts Threaten OCSA’s Continued Existence**

14 30. On March 8, 2019, the District made its unlawful Demand, and subsequently issued  
15 its invoice to OCSA for retroactive “equitable share” general fund support for each year from  
16 2002 to 2019 in the amount of \$19,493,329. Prior to issuing this invoice, the District had not  
17 provided OCSA with 15-months notice of its demand for encroachment, it had not proposed to  
18 OCSA its pro-rata share for general fund support at the end of each fiscal year, for that year, and it  
19 had not provided OCSA with documentation to support this Demand, nor allowed OCSA an  
20 opportunity to provide input and respond. The District also failed to provide an estimate of  
21 OCSA’s share of the general fund support by June 30 of any preceding year (or at any time).  
22 Additionally, each year from 2002 through 2019, the District had not identified OCSA as a source  
23 of revenue or general fund support in any of its annually adopted SELPA local plans and budgets.  
24 Moreover, each year from 2002 through 2019, the District reviewed OCSA’s budgets and  
25 financial plans in its oversight capacity and never informed OCSA that it had failed to adequately  
26 contribute toward District-wide special education funding.

27 31. On April 8, 2019, in response to the Demand, OCSA gave notice to the District of  
28 its intent to leave the District’s SELPA, effective July 1, 2020. OCSA thus exercised the very



1 right and resulting benefit of the 15-month notice requirement it negotiated for and secured in the  
2 charter agreement, and thus owes no duty to contribute to the District's general fund support either  
3 retroactively or prospectively, as OCSA will leave the District's SELPA within 15 months of the  
4 District's March 8, 2019 notice regarding the Demand.

5 32. On April 15, 2019, the District informed OCSA by letter that it intends to offset  
6 the unpaid Demand by withholding OCSA's Monthly Transfers, commencing on May 15, 2019.  
7 As the District's unlawful actions as set forth herein threaten OCSA's ability to continue  
8 operations, OCSA has no alternative but to bring this action.

9 **FIRST CAUSE OF ACTION**

10 **(Petition for Writ of Mandate**  
11 **Code of Civil Procedure Section 1085 and 1094.5**  
12 **Violation of Education Code section 47635)**  
13 **(As Against the District)**

14 33. OCSA realleges and incorporates all prior allegations as if fully set forth herein.

15 34. At all relevant times including the present, the District has been and remains  
16 OCSA's chartering authority and LEA for the District's SELPA within the meaning of Section  
17 47635.

18 35. On April 15, 2019, the District informed OCSA by letter that it intends to offset the  
19 unpaid Demand by withholding OCSA's Monthly Transfers, commencing on May 15, 2019.

20 36. The District has no legal authority to withhold any funding from OCSA because the  
21 Demand is unlawful for the reasons alleged herein, including each cause of action incorporated by  
22 reference as if stated herein.

23 37. Additionally, even if OCSA owed any amounts to the District for general fund  
24 support, the District may not lawfully withhold OCSA's Monthly Transfers. Section 47635  
25 imposes a ministerial and mandatory duty on the District to transfer to OCSA funding in lieu of  
26 property taxes in monthly installments, by no later than the 15<sup>th</sup> of each month. Subsection (b) of  
27 Section 47635 provides in pertinent part:

28 (b) The sponsoring local educational agency *shall transfer* funding in lieu of  
property taxes to the charter school in monthly installments by no later than the 15<sup>th</sup>  
of each month.

1 (emphasis added).

2 38. Section 47635 grants no discretion to the District in its obligation to perform this  
3 ministerial and mandatory duty.

4 39. The District and OCSA, however, agreed under OCSA's charter that the District  
5 may withhold OCSA's Monthly Transfers for failure to timely pay the District's invoice for  
6 general fund support, but solely and expressly contingent upon the District's compliance with each  
7 of the Conditions Precedent under OCSA's charter – each of which are designed to prohibit and  
8 protect OCSA from the District's actions at issue here.

9 40. The District, however, has failed to comply with all of the Conditions Precedent,  
10 and thus remains subject to its ministerial and mandatory duty under Section 47635(b) to make  
11 Monthly Transfers to OCSA.

12 41. The District's actions and threat to withhold Monthly Transfers constitutes  
13 arbitrary and capricious conduct in violation of the District's mandatory legal duties, as well as an  
14 abuse of discretion to the extent any discretion exists. Pursuant to California Code of Civil  
15 Procedure section 1085, "a writ of mandate may be issued by any court... to compel the  
16 performance of an act which the law specifically enjoins, as a duty resulting from an office, trust,  
17 or station...."

18 42. OCSA thus seeks a writ of mandate directing the District to comply with its  
19 ministerial and mandatory legal duty to make all Monthly Transfers to OCSA pursuant to Section  
20 47635. OCSA additionally seeks temporary and permanent injunctive relief enjoining the District  
21 from withholding or offsetting any amounts of Monthly Transfers to OCSA.

22 **SECOND CAUSE OF ACTION**

23 **(Petition for Writ of Mandate**  
24 **Code of Civil Procedure Section 1085 and 1094.5**  
25 **Violation of Education Code section 47646)**  
26 **(As Against the District)**

27 43. OCSA realleges and incorporates all proceeding allegations as if set forth herein.

28 44. Section 47646(c), provides that the District, as the LEA operating a SELPA local  
plan established pursuant to Chapter 3 (commencing with Section 56205) of Part 30, shall ensure

1 that each charter school that is deemed a public school for purposes of special education also  
2 “contributes an equitable share of its charter school block grant funding to support districtwide  
3 special education instruction and services....”

4 45. The District, however, has acted arbitrarily and capriciously and abused its  
5 discretion under Section 47646(c) in pursuing its Demand on OCSA for retroactive “equitable  
6 share” general funding support dating back to 2002.

7 46. First, Section 47646(c) expressly provides that the District’s authority to demand  
8 “equitable share” contribution from OCSA is *contingent* on the District’s operation of special  
9 education *pursuant to the local plan* established pursuant to Chapter 3 (commencing with Section  
10 56205) of Part 30. Here, however, the District’s Demand for retroactive general fund support is  
11 not consistent with, but instead contradicts each of the District’s previously adopted SELPA local  
12 plans and annual budgets. The Demand therefore effectively seeks to amend each previously  
13 adopted local plan *post hoc* – in violation of the mandatory substantive and procedural  
14 requirements for adoption and operation of SELPA local plans under Section 56205 *et seq.*, as  
15 well as OCSA’s due process protections afforded under these statutory requirements.

16 47. Second, because the District received a Windfall each year from State-provided  
17 special education funding on OCSA’s behalf under its agreement with OCSA regarding allocation  
18 of special education responsibilities, the parties agreed under the prior and current charter  
19 agreements that the District may not encroach or assess OCSA for District-wide general funding  
20 support unless it first satisfies all Conditions Precedent. The Conditions Precedent are legally  
21 valid and enforceable, as OCSA’s rights under the charter derive both from the statutory  
22 framework of the CSA as well as contract, and each may be harmonized with Section 47646(c).  
23 The District has failed to satisfy all four Conditions Precedent, and thus has abused its discretion  
24 in pursuing the Demand.

25 48. Third, the District confirmed and ratified each year from 2002 through 2019 that it  
26 would not seek general fund support from OCSA by not identifying OCSA as a source of revenue  
27 (or debtor with any outstanding liabilities) in each previously adopted SELPA local plan and  
28 supporting budgets. Additionally, each year the District exercising its chartering authority

1 oversight responsibilities (and charging OCSA for these services) approved OCSA’s budgets and  
2 financial plans without ever informing OCSA of its alleged failure to adequately provide general  
3 fund support. The District therefore additionally waived and is estopped from pursuing the  
4 Demand.

5 49. Fourth, to the extent the District retains any discretionary authority to enforce  
6 Section 47646(c) in light of the foregoing prohibitions, the District has acted arbitrarily and  
7 capriciously and abused its discretion because the District’s Demand is not “equitable” and does  
8 not constitute “equitable share” contribution within the meaning of the statute for several reasons:

- 9 • The Demand is not equitable because as applied retroactively, and without notice  
10 and opportunity to comment or object, it violates OCSA’s fundamental right to due  
11 process.
- 12 • The District’s statutory authority as LEA to ensure that a SELPA member  
13 “contributes” its “equitable share” applies consistent with budgeting practices to  
14 present expenses/liabilities (the current or immediately preceding year) rather than  
15 limitlessly retroactive. §47646(c).
- 16 • The District’s retroactive Demand spanning 17 years and intent to withhold  
17 OCSA’s Monthly Transfers (estimated for the 2018-2019 year to total  
18 approximately \$5.5 million – 30% of OCSA’s state funding) until the Demand is  
19 satisfied, is *ultra vires*, unconscionable and exceeds the scope of any reasonable  
20 interpretation of “equitable share” contribution within the meaning of the statute.  
21 Had the District complied with the Conditions Precedent (assuming OCSA did not  
22 exercise its right to leave the District’s SELPA following the District’s required  
23 15-month notice of intent to encroach), the District would have provided OCSA  
24 with an estimated assessment prior to the fiscal year at issue, which would have  
25 allowed OCSA to budget accordingly. At the conclusion of that fiscal year, the  
26 District would have proposed an assessment to OCSA – for that single prior year –  
27 supported by documentation, coupled with the opportunity to review and  
28 comment. These charter requirements, each of which are consistent with best

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practices and thus inherent in the meaning of “equitable” share as referenced in the statute, would enable OCSA to anticipate, budget for, confirm through documentation, and influence the amount of assessment (limited to one year), thus limiting OCSA’s exposure to feasible amounts. The District’s actions, however, in violation of the Conditions Precedent and the statute’s threshold guiding principle of “equity,” deprived OCSA of all the foregoing protections. As a consequence of the District’s actions, the District now demands and intends to withhold from OCSA approximately \$5.5 million a year for approximately 4 years to retroactively recover for 17-years of alleged shortfall – actions that would bankrupt OCSA (and any other charter school), actions and resulting consequences that are inherently inconsistent with any reasonable interpretation of “equitable share” contribution contemplated by the statute.

- OCSA is equitably entitled to offset against any required contribution the District’s Windfall obtained because of OCSA.
- To the extent the Conditions Precedent are not enforceable, the Demand likewise is unenforceable as OCSA’s participation in the District’s SELPA since 2010, as well as any requirements regarding OCSA’s contribution to the District’s SELPA general fund contained in OCSA’s 2010-2015 and present charter, are subject to rescission, severance and/or reformation based on the District’s misrepresentations that induced OCSA to remain in the District’s SELPA, and/or based on the doctrines of unilateral or mutual mistake, *ultra vires* and unconscionability.

50. The District thus has acted arbitrarily and capriciously, and failed to proceed in the manner required by law in making its Demand on OCSA in reliance on Section 47646. OCSA is entitled to a writ of mandate directing the District to void and set aside any Resolutions, approvals or directives relating to the Demand (including any efforts to enforce it). OCSA further seeks a temporary and permanent injunction enjoining the District from withholding all or any portion of OCSA’s Monthly Transfers.

1 **THIRD CAUSE OF ACTION**

2 **(Breach of Contract)**  
3 **(As Against the District)**

4 51. OCSA realleges and incorporates all proceeding allegations as if set forth herein.

5 52. OCSA and the District are parties to that certain agreement titled OCSA’s Charter  
6 Renewal, 2015-2020. OCSA’s charter while statutorily authorized additionally constitutes a  
7 legally enforceable contract between OCSA and the District.

8 53. OCSA has performed all of its obligations under the charter or is excused from any  
9 non-performance of its obligations.

10 54. The charter agreement provides that OCSA’s legal obligation in response to the  
11 Demand is expressly conditioned upon the District’s compliance with each of the Conditions  
12 Precedent.

13 55. The District has failed to comply with each of the Conditions Precedent.  
14 Specifically, the District failed to provide OCSA 15-month advance notice of the Demand. The  
15 District failed to provide OCSA its proposed pro-rata share for general fund support at the end of  
16 each fiscal year, for that year. The District failed to provide OCSA with documentation to support  
17 the Demand, and it failed to allow OCSA an opportunity to provide input and respond prior to  
18 issuing its invoice. Finally, the District failed to provide an estimate of OCSA’s share of the  
19 general fund support by June 30 of the preceding year (or at any time).

20 56. On or about March 8 and 20, 2019, the District breached the charter by making its  
21 Demand, invoicing and retroactively demanding from OCSA general fund support from 2002  
22 through 2019, without first satisfying any, much less all of the Conditions Precedent.

23 57. OCSA is informed and believes that the District additionally intends to self-enforce  
24 its unlawful Demand by withholding OCSA’s Monthly Transfers. The charter agreement  
25 provides that the District may withhold Monthly Transfers, but solely on the condition that the  
26 District first fully complies with each of the Conditions Precedent (all of which are designed to  
27 protect OCSA precisely from the unlawful conduct exhibited by the District’s retroactive  
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1 Demand). As the District has failed to comply with the Conditions Precedent, any withholding of  
2 OCSA’s Monthly Transfers would be in breach of the charter agreement.

3 58. As a proximate result of the District’s breaches, OCSA has been damaged and  
4 harmed and will continue to be harmed in an amount to be proven at trial. OCSA, however, does  
5 not seek damages as its remedy for this cause of action at present (while it reserves the right to  
6 later amend this claim to seek this remedy.) OCSA seeks specific performance of the Conditions  
7 Precedent, along with a temporary and permanent injunction enjoining the District from enforce its  
8 unlawful demand, including by withholding OCSA’s Monthly Transfers.

9 **FOURTH CAUSE OF ACTION**

10 **(42 U.S.C. § 1983 – Violation of Procedural Due Process**  
11 **14<sup>th</sup> Amendment of U.S. Constitution)**  
12 **(As Against all Respondents/Defendants)**

13 59. OCSA realleges and incorporates all proceeding allegations as if set forth herein.

14 60. OCSA possesses vested and legally enforceable rights within the protections of the  
15 Fourteenth Amendment to the United States Constitution under the CSA and its charter to compel  
16 the District to afford it due process before depriving it of any property interest. “The essence of  
17 due process is the requirement that a person in jeopardy of serious loss [be given] notice of the  
18 case against him and opportunity to meet it.” (*Today’s Fresh Start, Inc. v. Los Angeles County of*  
19 *Education* (2013) 57 Cal. 4th 197, 212, citing *Mathews v. Eldridge* (1976) U.S. 424 U.S. 319,  
20 348.) “The opportunity to be heard must be afforded ‘at a meaningful time and in a meaningful  
21 manner.’” (*Id.*)

22 61. The Defendants’ actions in making their Demand on OCSA (in contravention of  
23 their previously adopted local plans and budgets, annual oversight determinations and the express  
24 terms of OCSA’s charter) and further threatening to enforce this Demand by withholding OCSA’s  
25 Monthly Transfers (in violation of mandatory statutory and charter obligation) violated OCSA’s  
26 Constitutionally protected due process rights to notice and meaningful opportunity to respond  
27 granted to OCSA under the SELPA approval procedures set forth in Section 56205, the District’s  
28 chartering authority oversight responsibilities in reviewing and approving OCSA’s annual budgets  
and financial plans, and as contained in the Conditions Precedent in the charter agreement





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- First, Section 47646(c) expressly provides that the District’s authority to demand “equitable share” contribution from OCSA is contingent on the District’s operation of special education pursuant to the local plan established pursuant to Chapter 3 (commencing with Section 56205) of Part 30. Here, however, the District’s Demand for retroactive general fund support is not consistent with, but instead contradicts each of the District’s previously adopted SELPA local plans and annual budgets. The Demand therefore effectively seeks to amend each previously adopted local plan *post hoc* – in violation of the mandatory substantive and procedural requirements for adoption and operation of SELPA local plans under Section 56205 *et seq.*, as well as OCSA’s due process protections afforded under these statutory requirements.
- Second, because the District received a Windfall each year under its agreement with OCSA regarding allocation of special education responsibilities, the parties agreed under the prior and current charter agreements that the District may not encroach or assess OCSA for District-wide general funding support unless it first satisfies all Conditions Precedent. The Conditions Precedent are legally valid and enforceable, as OCSA’s rights under the charter derive both from the statutory framework of the CSA as well as contract, and each may be harmonized with Section 47646(c). The District has failed to satisfy all Conditions Precedent, and thus has abused its discretion in pursuing the Demand.
- Third, the District confirmed and ratified each year from 2002 through 2019 that it would not seek general fund support from OCSA by not identifying OCSA as a source of revenue (or debtor with any outstanding liabilities) in each previously adopted SELPA local plan and supporting budgets. Additionally, each year the District exercising its chartering authority oversight responsibilities (and charging OCSA for these services) approved OCSA’s budgets and financial plans without ever informing OCSA of its alleged failure to adequately provide general fund

1 support. The District therefore additionally waived and is estopped from pursuing  
2 the Demand.

- 3 • Fourth, to the extent the District retains any discretionary authority to enforce  
4 Section 47646(c) in light of the foregoing prohibitions, the District has acted  
5 arbitrarily and capriciously and abused its discretion because the District’s Demand  
6 is not “equitable” and does not constitute “equitable share” contribution within the  
7 meaning of the statute for several reasons:

8 (i) The Demand is not equitable because as applied retroactively, and  
9 without notice and opportunity to comment or object, it violates OCSA’s  
10 fundamental right to due process guaranteed by the United States Constitution, the  
11 local plan area annual plan and budget requirements, the CSA’s annual fiscal  
12 condition oversight procedures, and the express terms of the charter agreement.

13 (ii) The District’s retroactive Demand spanning 17 years and intent to  
14 withhold OCSA’s Monthly Transfers (estimated for the 2018-2019 year to total  
15 approximately \$5.5 million – 30% of OCSA’s state funding) for approximately 4  
16 years until the Demand is satisfied, is *ultra vires*, unconscionable and exceeds the  
17 scope of any reasonable interpretation of “equitable share” contribution within the  
18 meaning of the statute. Had the District complied with the Conditions Precedent  
19 (assuming OCSA did not exercise its right to leave the District’s SELPA following  
20 the District’s required 15-month notice of intent to encroach), the District would  
21 have provided OCSA with an estimated assessment prior to the fiscal year at issue,  
22 which would have allowed OCSA to budget accordingly. At the conclusion of that  
23 fiscal year, the District would have proposed an assessment to OCSA – for that  
24 single prior year -- supported by documentation, coupled with the opportunity to  
25 review and comment. These charter requirements, each of which are consistent  
26 with best practices and thus inherent in the meaning of “equitable” share as  
27 referenced in the statute, would enable OCSA to anticipate, budget for, confirm  
28 through documentation, and influence the amount of assessment (limited to one

1 year), thus limiting OCSA’s exposure to feasible amounts. The District’s actions,  
2 however, in violation of the Conditions Precedent and the statute’s threshold  
3 guiding principle of “equity,” deprived OCSA of all the foregoing protections. As  
4 a consequence of the District’s actions, the District now demands and intends to  
5 withhold from OCSA approximately \$5.5 million a year for approximately 4 years  
6 to retroactively recover for 17-years of alleged shortfall – actions that would  
7 bankrupt OCSA (and any other charter school), actions and resulting consequences  
8 that are inherently inconsistent with any reasonable interpretation of “equitable  
9 share” contribution contemplated by the statute.

10 (iii) OCSA is equitably entitled to offset against any required  
11 contribution the District’s Windfall obtained because of OCSA.

12 (iv.) The District’s Demand is time-barred by the governing one-year  
13 statute of limitations under Code of Civil Procedure section 340(b) as an action  
14 upon a statute for a forfeiture or penalty to the people of the state, or the three year  
15 statute of limitations set forth Code of Civil Procedure section 338(a).

- 16 • Fifth, OCSA seeks a judicial declaration that, to the extent and in the event that the  
17 Conditions Precedent are not enforceable, the Demand likewise is unenforceable as  
18 OCSA’s participation in the District’s SELPA since 2010, as well as any  
19 requirements regarding OCSA’s contribution to the District’s SELPA general fund  
20 contained in OCSA’s 2010-2015 and present charter, are subject to rescission,  
21 severance and/or reformation based on the District’s misrepresentations regarding  
22 the validity and its intent to comply with the Conditions Precedent that induced  
23 OCSA to remain in the District’s SELPA, and/or based on the doctrines of  
24 unilateral or mutual mistake, *ultra vires* and unconscionability

25 69. OCSA additionally seeks a judicial determination that the District may not enforce  
26 its Demand on the grounds that the Demand is in breach of the charter agreement’s Conditions  
27 Precedent.  
28



1 To the extent OCSA owes any money to the District, the amount is unknown to OCSA and  
2 cannot be ascertained without an accounting documenting the basis for the District's Demand.  
3 The District has failed and refuses to render such accounting.

4  
5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, OCSA prays for Judgment against Respondent and Defendants as  
7 follows:

8 1. As to the First Cause of Action: for judgment and a writ of mandate directing the  
9 District to comply with its mandatory legal duty to make Monthly Transfers to OCSA pursuant to  
10 Section 47635, as well as temporary and permanent injunctive relief enjoining the District from  
11 withholding all or any portion of OCSA's Monthly Transfers.

12 2. As to the Second Cause of Action: for judgment and a writ of mandate directing the  
13 District to void and set aside any Resolutions, approvals or directives relating to the Demand  
14 (including any attempt to enforce the Demand by withholding Monthly Transfers). OCSA  
15 additionally seeks temporary and permanent injunctive relief enjoining the District from  
16 withholding all or any portion of OCSA's Monthly Transfers.

17 3. As to the Third Cause of Action: for judgment finding the District in breach of the  
18 charter, for specific performance of the Conditions Precedent and for temporary and permanent  
19 injunctive relief enjoining the District from withholding all or any portion of OCSA's Monthly  
20 Transfers.

21 4. As to the Fourth Cause of Action: for judgment finding that Respondent and  
22 Defendants and each of them infringed on OCSA's constitutional rights. OCSA further seeks an  
23 order against Respondent and all Defendants to void and set aside any Resolutions, approvals or  
24 directives relating to the Demand (including any attempt to enforce it by withholding Monthly  
25 Transfers). OCSA additionally seeks compensatory damages in an amount to be proven at trial.  
26 OCSA additionally seeks preliminary and permanent injunctive relief enjoining the District from  
27 withholding all or any portion of OCSA's Monthly Transfers.

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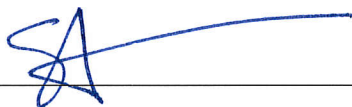
**VERIFICATION**

I, Steven Wagner, declare as follows:

1. I am the Chief Operating Officer and Vice-President of Business for Orange County School of the Arts, petitioner and plaintiff, in the above-named action, and I am authorized to make this verification on its behalf.

2. I have read the foregoing Verified Petition for Writ of Mandate and Complaint and know the contents thereof, and certify that the same are true of my own knowledge, except as to the matters which are stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed 06 day of May 2019 at Santa Ana, California.

  
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