

**ENDORSED  
FILED  
ALAMEDA COUNTY**

**NOV 13 2002**

CLERK OF THE SUPERIOR COURT  
By E. Opelski-Erickson, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA**

BAY AREA SCHOOL FOR  
INDEPENDENT STUDY, a California  
Charter School,

Petitioner,

vs.

SUNOL GLEN UNIFIED SCHOOL  
DISTRICT, a California Public School  
District; DIANE EVERETT, Superintendent  
of Sunol Glen Unified School District, and  
DOES 1 through 10, inclusive

Respondents.

No. 2002070992

ORDER GRANTING  
PETITION FOR  
WRIT OF MANDATE

The Petition of BAY AREA SCHOOL FOR INDEPENDENT  
STUDY ("Charter School") for Writ of Mandate ("Petition") came on regularly for  
hearing on November 7, 2002 in Department 31 of this Court, the Honorable  
James A. Richman, presiding. Charter School appeared by Paul C. Minney and  
respondents SUNOL GLEN UNIFIED SCHOOL DISTRICT and DIANE  
EVERETT (for convenience, collectively the "District") appeared by John R. Yeh.

After full consideration of the moving papers, the opposition thereto, the

authorities cited by the parties, as well as arguments presented at the hearing, and the matter having been submitted for decision, and good cause appearing, the court concludes that the Petition is well taken, and the Writ of Mandate is granted.

### BACKGROUND

This matter comes before the court on the following undisputed factual background. District, consisting at the time of a single school, the Sunol Glen School, approved the charter petition of oneZone Learning Foundation (now known as Axis for Learning) on April 24, 2002, providing for Charter School to begin operations in August, 2002, and to begin providing instruction in September, 2002. On September 24, 2002 District released "in-lieu property tax funding" to Charter School in the total amount of \$100,736.00, calculated on the basis of estimated average daily attendance for the months of August and September. Communications between the parties leading up to this disbursement included Charter School's request that the funding for the month of October be disbursed by the 15<sup>th</sup> of the month, pursuant to *California Education Code § 47635*<sup>1</sup>. At the time Charter School filed the instant Petition on November 1, 2002, no funds had been released by District for the month of October. District has informed Charter School, through counsel, that certain requirements must be met prior to the release of any further funds.

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<sup>1</sup> Unless otherwise identified, all statutory references shall be to the *California Education Code*.

## DISCUSSION

In enacting the Charter Schools Act of 1992 (§§ 47600 *et seq.*) ("Act"), the legislature sought to disrupt entrenchment of the perils resident in the complex tangle of rules sustaining the public education system in California. (*Wilson v. State Board of Education* (1999) 75 Cal.App.4<sup>th</sup> 1125, 1130.) The Act originally set out six goals: 1) improving pupil learning; 2) increasing learning opportunities, especially for low-achieving students; 3) encouraging use of different and innovative teaching methods; 4) creating new professional opportunities for teachers, including being responsible for the school site learning program; 5) providing parents and students with more choices in the public school system; and 6) holding schools accountable for measurable pupil outcomes and providing a way to change from rule based to performance based accountability systems. Assembly Bill No. 544, enacted in 1998, added a seventh goal: to provide vigorous competition within the public school system to stimulate continual improvements in all public schools. (§ 47601; *Wilson, supra*, at 1130-1133.) Also added by Assembly Bill No. 544 were provisions for accountability, including § 47604.3, which compels a charter school to "promptly respond to all reasonable inquiries..." In addition, § 47630 (the opening section of the "funding" chapter) provides that the legislature intended to create a "simple" method of funding, and § 47652 details what a charter school must do to satisfy the California Department of Education ("CDE") regarding the establishment of a Average Daily Attendance

("ADA") figure for purposes of the State funding portion of the school's funds under the Act. (§47633)

The underlying controversy between the parties revolves around District's request for credentialing and other documentation regarding teachers and certain student information. Section 47605, which sets forth the procedure for petitioning to establish a charter school, provides at subsection (l) that "[t]eachers in charter schools shall be required to hold a Commission on Teacher Credentialing certificate, permit or other document equivalent to that which a teacher in other public schools would be required to hold." It goes on to mandate that "[t]hese documents shall be maintained on file at the charter school and shall be subject to a periodic inspection by the chartering authority." Charter School does not claim that District is not entitled to the information it has requested regarding its teachers and students. Rather, the issue is essentially one of timing, with the District contending that it may withhold funds until all of this requested information is received.

Section 47635(b) provides that "[t]he 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." Charter School asserts that inclusion of the word "shall" in the language of this code section renders the release of funds by District a "ministerial duty," thereby properly subject to the issuance of a writ of mandate. District, on the other hand, asserts that since the

amount of funds to be released is based on the Average Daily Attendance (“ADA”) of Charter School (§ 47635), and that a statutory mechanism exists whereby the Superintendent of Public Instruction must make adjustments to the amount of funding initially based on an estimated ADA for a new charter school when actual ADA becomes known (§ 47652), the release of funds falls within the discretion of District, and, as such, may not be mandated. District argues that the use of the word “shall” in § 47635(b) does not render that provision mandatory because that code section does not evidence an unconditional obligation to disburse “in lieu of” funding under any and all circumstances. The court concludes that District’s position is unsupportable.

The legislature’s intent to create a mandatory, and therefore “ministerial,” duty may be evidenced by “a showing that a right dependent upon the doing of the act within the time fixed is lost or impaired by the nonperformance of the task.” (*Palos Verdes Peninsula Unified School Dist. v. Felt* (1976) 55 Cal.App.3d 156, 161.) Here, the record reflects that over 64% of Charter School’s budget is comprised of the subject funds, threatening the school’s continued existence if the funds are not timely disbursed by the 15<sup>th</sup> of each month. The legislature surely was aware that with a major source of funding withheld, a charter school could not long remain financially viable. While District was clearly acting within its discretion when it approved Charter School’s petition, once the charter became effective, its discretion was exhausted as to the option to withhold funding

altogether. (*Glendale City Employees Assoc. v. City of Glendale*, (1975) 15 Cal.3d 328, 345.)

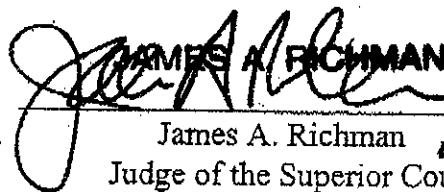
In addition, the Act contains specific enforcement mechanisms which may be invoked by District to ensure Charter School's compliance with the Act itself and the terms of its charter. In particular, § 47607(b) provides that a charter may be revoked for material violations of any conditions, standards, or procedures set forth in the Act; for failure to meet or pursue any of the pupil outcomes identified in the charter; for failure to meet generally accepted accounting principals, or for engaging in fiscal mismanagement; or for violating any provision of law. Importantly, § 47697(c) provides that the charter school be given notice and a "reasonable opportunity to cure the violation." Furthermore, § 47604.5 provides for an expedited procedure to address mismanagement problems.

Mandamus lies not only to compel the performance of a ministerial duty, but also to correct an abuse of discretion. (8 Witkin, Cal. Proc. (4<sup>th</sup> Ed. 1997) Extraordinary Writs pp. 885-886; and *Bright Development v. City of Tracy* (1993) 20 Cal.App.4<sup>th</sup> 783.) Here, since there is no indication anywhere in the Act that the legislature intended that withholding of funding be utilized as an additional enforcement mechanism, the court finds that District has exceeded its authority under the act.

IT IS HEREBY ORDERED that the Petition for Writ of Mandate is granted, and the District shall release the funds due to Charter School for the

month of October, 2002, in the amount certified by the CDE, and shall henceforth  
comply with the provisions of § 47635 with regard to the timing of future  
disbursements.

11/13/2002  
Date

  
JAMES A. RICHMAN  
James A. Richman  
Judge of the Superior Court

**CLERK'S DECLARATION OF MAILING**

I certify that I am not a party to this cause and that I caused a true copy of the foregoing ORDER GRANTING PETITION FOR WRIT OF MANDATE to be mailed, first-class, postage pre-paid, in a sealed envelope, addressed as shown below. Executed, deposited and mailed in Oakland, California on November 13, 2002.

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