

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 01/28/2015

TIME: 11:00:00 AM

DEPT: C-24

JUDICIAL OFFICER PRESIDING: Jeffrey L. Gunther

CLERK: Deborah Jellison

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2014-00021153-CU-MC-CTL** CASE INIT.DATE: 06/26/2014

CASE TITLE: **San Diego Unified School District vs. ALPINE UNION SCHOOL DISTRICT [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

APPEARANCES

On Monday, January 26, 2015, the Court heard Petitioner San Diego Unified School District's petition for writ of mandate. Following the hearing, the Court took the matter under submission. After further research and considering all oral and written arguments by the parties, **the Court confirms and modifies its tentative ruling as follows:**

Petitioner San Diego Unified School District ("SDUSD") seeks a writ of mandate against Respondent Alpine Unified School District ("Alpine") and Real Party in Interest AEALAS, aka Albert Einstein Academy for Letters, Arts and Sciences, Inc., dba Endeavor Academy ("Endeavor"), alleging two causes of action for (1) violation of Education Code §§47605 and 47605.1, and (2) violation of Education Code § 47607. Alpine and Endeavor separately oppose.

Facts

In September 2012, Endeavor submitted a charter petition to Alpine seeking to establish a charter school. Alpine's Board approved the charter petition in November 2012 and Endeavour began serving students on August 18, 2013.

Initially, Endeavor opened schools at (a) 3524 Mount Acadia Boulevard, San Diego, CA 92111, and at (b) 2285 Murray Ridge Road, San Diego, CA 92123. Subsequently, Endeavor operated three schools, all of which are location in the SDUSD's geographic boundaries: (a) 3450 Clairemont Drive, San Diego, CA 92117; (b) 2285 Murray Ridge Road, San Diego, CA 92123; and (c) 2069 Ebers Street, San Diego, CA 92107. Based on representations at the hearing, only one location is in operation at this time, and it operates within SDUSD's geographic boundaries.

SDUSD learned about Endeavor's charter schools in December 2013 and subsequently wrote to Endeavor and Alpine, objecting to Endeavor maintaining charter schools within SDUSD's boundaries. The parties met in March 2014 to attempt to resolve the issues. In May 2014, Endeavor submitted a "material revisions" charter to Alpine, in a clear effort to try and overcome several of the problems created by Endeavor's presence in the SDUSD. SDUSD attended the Alpine meeting in June 2014 to oppose the charter. Alpine approved the revisions on June 19, 2014.

Charter Schools Act (Education Code, § 4600 et seq., ["CSA"])

Section 47605, entitled "Petition for establishment of charter school within school district; procedures for submission, review, and approval or denial; standards and assessments; admission policies and employment practices; supervisorial and oversight responsibilities; petition for renewal; teacher credentials; financial audit report," provides in relevant part that:

"[A] petition for the establishment of a charter school within a school district may be circulated by one or more persons seeking to establish the charter school. A petition for the establishment of a charter school **shall identify a single charter school that will operate within the geographic boundaries of that school district.** A charter school may propose to operate at multiple sites within the school district, as long as each location is identified in the charter school petition.

[¶¶]

(4) After receiving approval of its petition, a charter school that proposes to establish operations at one or more additional sites shall request a material revision to its charter and shall notify the authority that granted its charter of those additional locations. The authority that granted its charter shall consider whether to approve those additional locations at an open, public meeting. If the additional locations are approved, they shall be a material revision to the charter school's charter.

(5) A charter school that is unable to locate within the jurisdiction of the chartering school district may establish one site outside the boundaries of the school district, but within the county in which that school district is located, if the school district within the jurisdiction of which the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools and the Superintendent are notified of the location of the charter school before it commences operations, and either of the following circumstances exists:

(A) The school has attempted to locate a single site or facility to house the entire program, but a site or facility is unavailable in the area in which the school chooses to locate.

(B) The site is needed for temporary use during a construction or expansion project.

[¶¶]

(g) The governing board of a school district shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be used by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school and upon the school district. The description of the facilities to be used by the charter school shall specify where the school intends to locate. The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cashflow and financial projections for the first three years of operation.

[¶]

(i) Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the applicable county superintendent of schools, the department, and the state board."

(Educ. Code, § 47605, subds. (a)(1), (a)(4), (a)(5), (g), and (i) (emphasis added).)

Section 47605.1, entitled "Location; geographic and site limitations," sets forth geographic parameters once the charter school is established pursuant to § 47605. "To achieve compliance with [section 47605.1], a charter school **shall** be required to receive approval of a charter petition in accordance with this section and Section 47605." (Educ. Code, § 47605.1(e)(3).) Further:

"(c) Notwithstanding any other law, a charter school may establish a resource center, meeting space, or other satellite facility located in a county adjacent to that in which the charter school is authorized if the following conditions are met: (1) The facility is used exclusively for the educational support of pupils who are enrolled in nonclassroom-based independent study of the charter school. (2) The charter school provides its primary educational services in, and a majority of the pupils it serves are residents of, the county in which the school is authorized.

(d) Notwithstanding subdivision (a) or subdivision (a) of Section 47605, a charter school that is unable to locate within the geographic boundaries of the chartering school district may establish one site outside the boundaries of the school district, but within the county within which that school district is located, if the school district where the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools is notified of the location of the charter school before it commences operations, and either of the following circumstances exist: (1) The school has attempted to locate a single site or facility to house the entire program but such a facility or site is unavailable in the area in which the school chooses to locate. (2) The site is needed for temporary use during a construction or expansion project."

(Educ. Code, §47605.1, subds. (d)-(e) (emphasis added).)

In its first cause of action, SDUSD alleges Alpine "violated its ministerial duty to comply with the requirements of the Education Code [Sections 47065 and 47605.1] in considering and/or approving a charter petitioner and/or 'material revision' of a charter." More specifically, Alpine (1) "failed to ensure that [Endeavor's] charter identified a location within [Alpine's] boundaries as required by Education Code sections 47605(a) and 47605(g)[,]" (2) "failed to ensure that Petitioner was provided with notice of a charter locating within Petitioner's boundaries prior to approval of the charter as required by sections 47605 and 47605.1[,]" and (3) "failed to make the requisite finding that Real Party [Endeavor] could not locate within [Alpine's] boundaries." (Petition, ¶¶ 34-37.)

In the second cause of action, SDUSD alleges:

"44. AUSD is charged pursuant to Education Code sections 47604.32 and 47607 with the oversight of the charter schools it authorizes, including Endeavour Academy. In accordance with section 47607, AUSD is required to take action where, as alleged herein, the charter school fails to comply with its charter and/or the MOU, fails to comply with law, and/or is fiscally mismanaged.

45. Through its purported "material revision," AEALAS admitted that it failed to comply with its charter and/or the MOU, and has failed to comply with law, including but not limited to Education Code sections 47605 and 47605.1.

46. AUSD has a clear, present, and ministerial duty to enforce the provisions of the CSA including section 47607, the terms of the charter, and the requirements contained in the MOU, and to take affirmative actions to rescind and/or to revoke the approval of any charter wrongfully approved and/or

operating in violation of the law, the requirements of its charter, and/or engaging in fiscal mismanagement. As illustrated by its approval of Endeavour Academy's purported "material revision," AUSD admitted that it failed, and continues to fail, to exercise its oversight obligations and comply with the Charter Schools Act."

CCP § 1085

Preliminarily, Alpine contends the Code of Civil Procedure § 1085 traditional writ of mandate is not the appropriate enforcement mechanism and inappropriately attempts to "second-guess the manner in which the elected Board of the Alpine Union School District exercised its discretion" with respect to Endeavor's petition to establish a charter school through Alpine. The Court disagrees with this contention, as well Alpine's interpretation of the allegations and circumstances presented by the Petition.

A writ of mandate will issue "to any inferior tribunal, corporation, board or person" to compel: (i) "the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station" or (ii) "the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person" (Code Civ. Proc., § 1085(a)).

A writ of traditional mandate is most often sought to compel a "clear, present and usually ministerial duty on the party of the respondent." (*California Association for Health Services at Home v. Dept. of Health Services* (2007) 148 Cal.App.4th 696, 704.) A ministerial duty is imposed on a person in public office who, by virtue of that position, is obligated to perform in a legally prescribed manner when a given state of facts exists. (*City of King City v. Community Bank* (2005) 131 Cal.App.4th 913, 926.) It is a duty that a governmental or private body, by or through a public or private board, agency, official, or employee, is required to perform without regard to any exercise of judgment or opinion.

Education Code § 47605(a)(1) states that "[a] petition for the establishment of a charter school **shall identify a single charter school** that will operate within the geographic boundaries of that school district." As the "chartering authority," it was Alpine's ministerial duty to ensure Endeavor's petition, among other things, identified a single charter school to operate within Alpine's boundaries. This is but one of the provisions at issue in the Petition, none of which grant Alpine discretion. While discretion may certainly come into play elsewhere in the Charter Schools Act, traditional mandamus is the appropriate enforcement mechanism for purposes of the provisions at issue in the Petition.

The Charter Schools Act requires a chartering authority (Educ. Code, § 47604.32) such as Alpine to ensure that all of the relevant threshold prerequisites are met and contained in a petition to establish a charter school *before* discretion in granting or denying the charter may be exercised.

Petition for Establishment of Charter School

Endeavor's petition sought to establish a charter school within Alpine pursuant to Education Code § 47605. This is not disputed, and the issue raised by SDUSD's petition is whether the charter granted to Endeavor by Alpine is lawful. The issue presented is strictly a question of law.

Alpine argues it properly granted Endeavor's petition for a charter school based on its finding that none of the disqualifying factors set forth in Section 47605(b) were present, and that it remedied any purported illegalities regarding Endeavor's operation through the June 2014 material revisions passed by its Board. Alpine further contends that Petitioner "itself has previously endorsed Alpine's

interpretation of the law and should not be allowed to take a different position here." Last, Alpine argues this Court is without jurisdiction to revoke Endeavor's charter, as Education Code § 47607(c) states that "[a] charter may be revoked by the authority that granted the charter under if the authority [Alpine] finds, through a showing of substantial evidence, that the charter school" did one or more acts set forth therein.

Real Party in Interest Endeavor sets forth additional arguments in opposition to the Petition. First, the mandamus causes of action should be denied because Endeavor is a non-classroom based charter school that operates only out of "resource centers," as opposed to "schoolsites," and, as such, they are not limited by the geographical limitations set forth in Education Code § 47605.1. Building on this premise, Endeavor argues that its operation of "resource centers" outside Alpine's boundaries but within SDUSD's boundaries is not a violation of the charter or the Charter School Act, as there are no restrictions on in-county resource centers. Like Alpine, Endeavor contends Petitioner SDUSD authorizes nonclassroom-based charter schools to operate resource centers within its boundaries, preventing its current position. Last, Endeavor argues that it is free to establish a resource center without first establishing a schoolsite.

The Respondents' contentions presume the validity of the charter and bypass any analysis of the core issue presented in the Petition. Education Code § 47605(g) states the governing board of a school district "shall require" during the petition process that the petitioners provide information regarding "the facilities to be used by the school" and the description "shall specify where the school intends to locate." Alpine did not require this and Respondents fail to present evidence otherwise. As stated in the Court's August 22, 2014 order denying SDUSD's petition for TRO/Preliminary Injunction, the contention that "the Clairemont Mesa area in San Diego" is a sufficient description is without merit. The petition must identify the facilities at "each location." (Educ. Code, §47605(a)(1).) In this respect, the petition is deficient. The original charter petition states that "[Endeavour Academy] will be located within the territorial jurisdiction of the AUSD[.]" but there is no evidence that Endeavor identified any "single charter school that will operate within" Alpine's boundaries, which violates §47605(a)(1). The charter also states "[n]o learning centers will be located in Alpine or greater East County."

Given these facts, a further showing is necessary. "A charter school that is unable to locate within the jurisdiction of the chartering school district may establish one site outside the boundaries of the school district, but within the county in which that school district is located, if the school district within the jurisdiction of which the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools and the Superintendent are notified of the location of the charter school before it commences operations, and either of the following circumstances exists: (A) The school has attempted to locate a single site or facility to house the entire program, but a site or facility is unavailable in the area in which the school chooses to locate [or] (B) The site is needed for temporary use during a construction or expansion project." (Educ. Code, § 47605(a)(5).)

Not only did Respondents fail to notify SDUSD of its proposal, they failed to notify as to the "one site" it proposed, instead establishing *three* locations within the boundaries of SDUSD.

Further emphasizing the above requirements, § 47605(g) mandates that Alpine "shall require that the petitioner ... provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be used by the school The description of the facilities to be used by the charter school shall specify where the school intends to locate." Subdivision (i) states that, "[u]pon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the applicable

county superintendent of schools, the department, and the state board." Despite Endeavor's clear intention (1) not to locate any of its facilities in Alpine's boundaries and (2) to locate within the boundaries of SDUSD, Alpine nonetheless approved the charter.

Without a lawful charter, which includes a physical location, subsequent "resource centers" or satellite facilities are unlawful and no material revisions can overcome these foundational prerequisites. Respondents' efforts to overcome Alpine's failure to adhere to the CSA during the charter petition process and Endeavor's failure to comply with the CSA's foundational requirements, in effect, concede the unlawfulness of Endeavor's charter. For instance, the "material revisions," approved by Alpine in June 2014, which re-characterize the locations within the SDUSD as "resource centers." Respondents contend that such facilities are nonclassroom-based and thus are outside the "geographical restrictions" set forth in Education Code §§ 47605 and 47605.1. Not only is there no basis in the law for this contention, the evidence presented in the case thus far indicates the facilities are in fact classroom-based. At minimum, the evidence indicates that is how they began when Alpine granted Endeavor's petition. Endeavor advertises blended learning facilities and concedes that classroom instruction is an option. Even if the Court were to ignore the problems with this premise, the Respondents have failed to present any legal authority to suggest that resource centers are exempt from the foundational requirements set forth in Education Code §§ 47605 and 47605.1.

Respondents cannot get around the fact that a charter school cannot exist without first petitioning pursuant to this provision, and the clear language of the provisions pertaining to the "petition for establishment of charter school within school district" are set forth in Education Code §§ 47605 and 47605.1. *Nowhere* in the CSA is there any indication that these initial prerequisites can be disregarded by a chartering authority, or by the petitioning charter school itself. Respondents' arguments that these provisions somehow do not apply to them finds no basis in the law. Education Code §§ 47605 and 47605.1 apply to all charter schools, regardless of whether they are "nonclassroom-based," "blended," etc. Until the legislature makes such distinctions, there is no legal basis on which to reach Respondents' conclusions.

At the hearing on the instant petition, Endeavor reiterated its position that its facilities, in their current state, fall outside the provisions of the Charter Schools Act at issue in the Petition. The Court is not persuaded, finding neither Respondent provided a sound legal basis on which to conclude Education Code § 47605 does not apply to the initial establishment of *all* charter schools, including Endeavor.

As discussed, the Charter Schools Act sets forth clear ministerial duties a chartering authority such as Alpine must carry out during the petition process. Specifically, Education Code § 47605(a) states that "[a] petition for the establishment of a charter school shall identify a single charter school that will operate within the geographic boundaries of th[e chartering authority's] school district."

Expanding upon this, Subdivision (g) provides that "[t]he governing board of a school district shall require that the petitioner ... provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be used by the school..." Where a petitioning entity seeks to operate outside of the chartering authority's boundaries, the chartering authority is required to ensure that the petitioning party show its efforts to locate within the chartering authority's boundaries, that space was unavailable, and that the chosen school district was notified in advance of the approval of the petition. (Educ. Code, § 47605(a)(5).)

The Court finds that Alpine did not require compliance with these initial threshold prerequisites which constitutes a failure to perform its ministerial duties under the Charter Schools Act. Subsequently

granting the petition without performing these duties was ultra vires act, which renders Endeavor's petition to establish itself as a charter school and the subsequent material revisions enacted thereto unlawful. Accordingly, the charter is null and void, the effect of which requires Alpine to revoke the charter granted to Endeavor.

During oral argument, Alpine reemphasized its opposition contention that revocation of a charter can only occur pursuant to Education Code § 47607. More specifically, Alpine contends the power to revoke a charter rests only with Alpine as the chartering authority, and the Court is thus without authority to order revocation. Respondents collectively contended that a ruling directing Alpine to revoke Endeavor's charter would improperly force Alpine to exercise its discretion in a certain way.

As set forth in *California School Boards Association v. State Board of Education* (2010) 186 Cal.App.4th 1298, "[s]ection 47607 provides, as here relevant, that '[a] charter may be revoked' (subd. (c), italics added) by the chartering agency if it finds that the charter school committed 'a material violation of any of the conditions, standards, or procedures' of the charter (subd. (c)(1)) or a violation of 'any provision of law' (subd. (c)(4)). By its plain language, the statute grants to chartering authorities broad discretion in initiating revocation proceedings against charter schools. This does not mean, however, that a chartering entity has absolute discretion to take no action against a school that violates the law or its charter." (*Id.* at 1325-1326.)

Further, while "courts should generally "let administrative boards and officers work out their problems with as little judicial interference as possible [because] boards are vested with a high discretion and its abuse must appear very clearly before the courts will interfere.'" (*Lindell Co. v. Board of Permit Appeals* (1943) 23 Cal.2d 303, 315.) But this does not mean that boards and officers may refuse to act, or may act with unfettered discretion. 'Mandamus may issue ... to compel an official both to exercise his discretion (if he is required by law to do so) and to exercise it under a proper interpretation of the applicable law.' (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442.) 'Where only one choice can be a reasonable exercise of discretion, a court may compel an official to make that choice.' (*California Correctional Supervisors Organization, Inc. v. Department of Corrections* (2002) 96 Cal.App.4th 824, 827.)" (*California School Boards Association v. State Board of Education, supra*, 186 Cal. App. 4th at 1327.)

Accordingly, the Court confirms its tentative ruling, which concludes that Endeavor's charter is null and void. Alpine's consideration of, and subsequent granting of Endeavor's petition for charter school constituted an ultra vires act. Alpine is thus directed to revoke the charter based on its failure to comply with the ministerial duties set forth in Education Code § 47605 and at issue in SDUSD's Petition.

Evidentiary Issues

In support of its reply to Alpine's opposition to the Petition, SDUSD filed a request for judicial notice. The Court grants judicial notice of Exhibit D, and grants judicial notice of the filing of the documents attached as Exhibits A through C.

The Court grants the request for judicial notice filed by Endeavor in support of its opposition to the Petition. With respect to SDUSD's request for judicial notice filed in reply to Endeavor's opposition, the Court grants judicial notice of the documents attached as Exhibits E and H, and grants judicial notice of the filing of the documents attached as Exhibits A through D.

The court overrules the parties' objections to the evidence, noting that the Petition presented an issue of

law, foregoing any need for the evidence submitted.

IT IS SO ORDERED.