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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

NEWHALL SCHOOL DISTRICT,

Petitioner/Plaintiff,

v.

ACTON-AGUA DULCE UNIFIED  
SCHOOL DISTRICT; and AEALAS,  
AKA ALBERT EINSTEIN ACADEMY  
FOR LETTERS, ARTS AND SCIENCES,  
INCORPORATED,

Respondents/Defendants.

AEALAS, AKA ALBERT ENSTEIN  
ACADEMY FOR LETTERS, ARTS  
AND SCIENCES, INCORPORATED,

Real Party in Interest.

CASE NO. BS149061

NOTICE OF RULING ON PETITION FOR  
WRIT OF MANDATE

Assigned for all Purposes to Judge James C.  
Chalfant, Department 85

Date: October 9, 2014  
Time: 9:30 a.m.  
Dept: 85

Petition Filed: June 6, 2014  
Amended Petition Filed: August 28, 2014

Exempt from filing fees pursuant to Gov.  
Code, § 6103.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on October 9, 2014, in Department 85 of the above  
entitled Court, the Court conducted the trial of Petitioner/Plaintiff Newhall School District's  
("Petitioner" or "NSD") First Amended Petition for Writ of Mandate ("Petition").

1 Sue Ann Salmon Evans and Karl Widell of Dannis Woliver Kelley appeared on behalf of  
2 the Petitioner; Heather Edwards and Eric Stevens of Girard & Edwards appeared on behalf of  
3 Acton-Agua Dulce Unified School District (“Acton-Agua Dulce”); and Paul Minney and Kathleen  
4 Ebert of Young, Minney & Corr, LLP appeared on behalf of AEALAS.

5 After consideration of the parties’ moving, opposition, and reply papers; the declarations  
6 and other evidence in support thereof; and oral argument presented, the Court ruled as follows:

7 The Court granted the Petition in part as follows:

8 Acton-Agua Dulce’s approval of the charter petition for Albert Einstein Academy-  
9 Elementary School, aka Albert Einstein Academy-SCV, (“AEA-SCV”) on May 16, 2013 is  
10 vacated and the charter is set aside in light of the Acton-Agua Dulce’s failure to support the bases  
11 for invoking the exception to geographic restrictions found in Education Code Section 47605(a)(5)  
12 and 47605.1(d) with findings.

13 AEALAS has 30 days from October 9, 2014 to start the charter petition process by  
14 submitting a new charter petition for AEA-SCV to Acton-Agua Dulce.

15 Acton-Agua Dulce has 30 days from submission of a new charter petition by AEALAS to  
16 conduct a public hearing on the petition. Acton-Agua Dulce must provide advance notice of the  
17 date, time, and location of the public hearing to Petitioner so that Petitioner may present evidence  
18 in connection with the public hearing.

19 Acton-Agua Dulce has 60 days from submission of a new charter petition by AEALAS to  
20 approve or deny the charter petition. If the charter petition seeks to locate the charter school  
21 outside Acton-Agua Dulce’s geographic boundaries, Acton-Agua Dulce’s board of trustees must  
22 make findings based supported by substantial evidence to invoke the exception to geographic  
23 restrictions in Education Code Section 47605(a)(5) and 47605.1(d). Acton-Agua Dulce is  
24 precluded from basing its decision to approve or deny the charter petition on a plan to generate  
25 revenue for the school district through its charter schools initiative. Acton-Agua Dulce’s plan to  
26 generate revenue by authorizing charter schools, including locating charter schools out-of-district,  
27 does not comply with the intent and purpose of the Charter Schools Act. Acton-Agua Dulce  
28 misunderstood this purpose in creating a plan to recruit charter schools for out-of-district

1 placement, and specifically in approving the charter for AEA-SCV on May 16, 2013. Acton-Agua  
2 Dulce must apply the Charter Schools Act properly, and not as a revenue generating device.

3 An Order to Show Cause Re Judgment and Writ Vacating Charter is set for February 5,  
4 2015 at 9:30 a.m. in Department 85. If Acton-Agua Dulce fails to file a return reporting to the  
5 Court that it has complied with this ruling, the Court will enter judgment in favor of Petitioner and  
6 a writ will issue compelling the closure of AEA-SCV. If Acton-Agua Dulce files a return  
7 reporting to the Court that it has complied with this ruling, the Court will enter judgment  
8 consistent with this ruling.

9 Petitioner is the prevailing party.

10 The Court adopted its written tentative decision on petition for writ of mandate, attached  
11 hereto as Exhibit A, as orally amended following argument. In addition to the foregoing, the Court  
12 adopted Petitioner's argument that a public hearing is required for any material revision of a  
13 charter to permit it to locate outside its authorizing school district's boundaries and struck  
14 anything to the contrary at or around page 23 from the written tentative decision.

15  
16 DATED: October 14, 2014

DANNIS WOLIVER KELLEY

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18 By:   
19 SUE ANN SALMON EVANS  
20 Attorneys for Petitioner/Plaintiff  
21 NEWHALL SCHOOL DISTRICT  
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**EXHIBIT A**

Petitioner Newhall School District ("Newhall") applies for a writ of mandate commanding Respondents Acton-Agua Dulce Unified School District ("Acton-Agua") and AEALAS, aka Albert Einstein Academy for Letters, Arts and Sciences, Incorporated ("Academy") to comply with Education Code sections 47605 and 47605.1, precluding the authorization and/or operation of Academy's charter schools, including Albert Einstein Academy-Elementary School, outside the geographical boundaries of Acton-Agua.

The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

**A. Statement of the Case**

Petitioner Newhall commenced this proceeding on June 6, 2014, against Respondent Acton-Agua and Real Party-in-Interest Academy. Newhall seeks a writ of mandate directing Respondent Acton-Agua to rescind or otherwise invalidate its decision to approve the charter petitions of Real Party Academy.

The operative pleading is the First Amended Petition ("FAP"), filed on August 28, 2014. The FAP's pertinent allegations are as follows:

Respondent Acton-Agua operates four district schools: two elementary schools, one middle school and one high school. Acton-Agua operates two elementary schools but has three elementary school sites. Facing declining enrollment, Acton-Agua has received "negative certification" on its budgets for the last several years and is currently monitored by the Los Angeles County Office of Education ("LACOE") under its fiscal oversight authority. Acton-Agua is fiscally unstable and Petitioner is informed and believes that it is the subject of a Fiscal Crisis Management Team ("FCMAT") solvency study. FAP ¶20.

Acton-Agua's plan to address its dire fiscal status is to authorize charter schools and obtain revenue through oversight fees and additional payments made by the charter schools through a memorandum of understanding ("MOU"). To avoid the negative fiscal consequences of losing its average daily attendance ("ADA") to the charter schools, Acton-Agua has authorized charters that will operate outside the Acton-Agua boundaries and within the boundaries of surrounding districts. This scheme to defraud by illegally locating charter schools and diverting students from their resident districts is a violation of law. FAP, ¶21.

Since 2012, in accordance with its plan, Acton-Agua has authorized 15 charter schools with all but one of the 15 to operate outside the Acton-Agua boundaries and within the boundaries of other school districts within Los Angeles County ("County"), including Petitioner Newhall. FAP, ¶22. Many of the charter petitions authorized by Acton-Agua are for charter schools which had been rejected or subject to investigation in other school districts for failure to comply with the requirements of law. FAP, ¶23.

In or about August 12, 2010, Academy submitted a charter petition to Petitioner to open an elementary charter school. On October 5, 2010, Petitioner denied Academy's elementary charter petition because the charter petition did not meet Education Code requirements, including that the charter school presented an unsound educational program, the charter petitioner was

demonstrably unlikely to successfully implement the program, the charter was not supported by the requisite number of parents and/or teachers, and the charter did not contain a reasonably comprehensive description of all of the elements required by Education Code<sup>1</sup> sections 47605(b)(1), (2), (3) and (5). Academy did not appeal that decision to LACOE under section 47605(j)(i). FAP, ¶24.

Academy's elementary charter petition was rejected by four other educational agencies multiple times, including by Saugus Union School District [rejected four times], Ventura Unified School District, Moorpark Unified School District, and LACOE. FAP, ¶25.

In March 2013, Academy submitted a charter petition to Respondent to open an Academy school ("AEA-SCV") to serve students in kindergarten through grade 6. According to the charter petition: "The founding group's intent has been to lease a site in the attendance area of the Acton-Agua Dulce Unified School District. After a thorough search by qualified real estate professionals, no suitable site currently exists in the attendance area of the Acton-Agua Dulce Unified School District. However, appropriate facilities have been found nearby in a neighboring community that ideally suits the needs of the proposed school. The space is more than adequate, both on the interior of the building, as well as property outdoors for a play area. It has the proper zoning and is very favorably priced." FAP, ¶26.

Despite the fact that the petition did not specifically identify the location of the charter school as required by sections 47605(a)(1) and 47605(g), or even identify which other school district the charter school proposed to locate, Respondent's board approved it on May 16, 2013, contingent upon approval of a Memorandum of Understanding ("MOU") between Respondent and Academy. Respondent's board approved an MOU with Academy at the same meeting. In the MOU, Acton-Agua required the charter school to pay 3.5% of the charter school's revenue, plus \$50,000 to Acton-Agua despite statutory Code limits on authorizer oversight fees. §47613. Academy is assigned charter number 1595 and began serving students in September 2013 with a purported address at 25300 Rye Canyon Road, Santa Clarita, CA 91355. FAP, ¶27.

In June 2013, months before submitting its charter petition to Acton-Agua, Academy signed a 10-year lease to operate the elementary charter authorized by Acton-Agua at 25300 Rye Canyon Road, which is within the boundaries of the Castaic Union School District. Academy made efforts to locate within the Saugus Union School District and has now purchased a school site within Petitioner's boundaries located at 25443 Orchard Village Road, Santa Clarita, where it plans to operate charter school(s) authorized by Acton-Agua. At no time was Castaic Union School District, Saugus Union School District or Petitioner provided notice as required by sections 47605 and 47605.1. Acton-Agua failed to take any oversight action to require compliance by Academy with the obligation to locate within Acton-Agua and otherwise comply with law. FAP, ¶28.

Academy has taken action to operate outside of Acton-Agua despite the fact that Acton-Agua has made its facilities available to Academy for 2014-2015 school year. FAP, ¶29. Acton-Agua has allowed Academy to violate the Education Code by approving Academy charter petitions which indicate Academy intends to operate charter schools outside of Acton-Agua. FAP, ¶30.

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<sup>1</sup>All further statutory references are to the Education Code unless otherwise stated.

Acton-Agua's approval of charter petitions allowing Academy to open its programs in unspecified locations within an expansive geographical region is contrary to law. By failing to identify a site within the Acton-Agua boundaries, not only does the charter fail to comply with the provisions of section 47605, the charter school could potentially be located within several school districts. Every potential school district that might serve as the location for the future charters is required to be notified pursuant to the provisions of section 47605(a)(5). The failure to provide timely and clear notice in advance of the petition approval invalidates the approval. FAP, ¶31.

Petitioner was not notified in advance of Respondent's approval of the charter petition authorizing the operation of Academy that it proposed to operate within Petitioner's jurisdictional boundaries as required by sections 47605(a)(5) and 47605.1. Moreover, Respondent is precluded from authorizing Academy to operate a second site outside Acton-Agua boundaries under any circumstances. FAP, ¶32.

Acton-Agua's board did not make findings of fact in connection with its approval of the Academy charter petition that the charter school had attempted to locate a single site or facility to house its program within Respondent's jurisdictional boundaries as required by sections 47605(a)(5) and 47605.1. FAP, ¶33.

Petitioner has notified Acton-Agua of the violation of law and requested that Acton-Agua rescind the charter approval and/or take appropriate oversight action to compel compliance by the charter school. Acton-Agua has failed to respond or take any action to correct its violations of law or those of the charter school for which it is charged with the obligation to provide oversight. FAP, ¶36.

### **B. Standard of Review**

There are three general categories of agency decisions challenged by mandamus: (1) quasi-adjudicative decisions in which the agency exercised its discretion and which are challenged by administrative mandamus under CCP section 1094.5 for, (2) quasi-legislative decisions challenged by traditional mandamus under CCP section 1085, and (3) ministerial or informal administrative actions also challenged by traditional mandamus. See Western States Petroleum Assn. v. Superior Court, (1995) 9 Cal.4th 571-76. An agency decision is quasi-adjudicative where it concerns the agency's application of discretion in the determination of facts after a hearing is required. See Neighborhood Action Group v. County of Calaveras, (1984) 156 Cal.App.3d 1176, 1186. In contrast, quasi-legislative actions generally concern the adoption of a "broad, generally applicable rule of conduct on the basis of general public policy." Salisbury v. State Bar, (1985) 39 Cal.3d 547.

Acton-Agua's initial decision to approve the charter of AEA-SVC is a quasi-legislative act. See California School Boards Assn. v. State Board of Education, (2010) 186 Cal.App.4th 1298, 1314, n.12 (charter creates a school district for certain purposes). A traditional writ of mandate is a method of challenging an agency's quasi-legislative act. The Sherwin-Williams Co. v. South Coast Air Quality Management District, (2001) 86 Cal.App.4th 1258, 1267. The agency action has a strong presumption of validity, and the burden is on the party challenging it. Western States Petroleum Assn. v. State Dept. of Health Services, (2002) 99 Cal.App.4th 999, 1007. The court's review is limited to an examination of the proceedings before the agency to

determine whether the agency action was arbitrary, capricious, or entirely lacking in evidentiary support, or whether it did not follow the procedure and give the notices required by law. Id. at 1018. The courts exercise this deferential standard “out of deference to the separation of powers between the Legislature and the judiciary, to the legislative delegation of administrative authority to the agency, and to the presumed expertise of the agency within its scope of authority.” California Hotel & Motel Assn. v. Industrial Welfare Commission, (1979) 25 Cal.3d 200, 212. The court does not weigh evidence or substitute its judgment for that of the agency, for to do so would frustrate legislative mandate. Shapell Industries, Inc. v. Governing Board, (1991) 1 Cal.App.4th 218, 230.

An administrative record is required for traditional mandamus review of a quasi-legislative action.

### **C. Requests for Judicial Notice**

#### **1. Newhall’s Requests for Judicial Notice**

Petitioner Newhall asks the court to judicially notice a tentative decision from San Diego Superior Court Case No. 37-2014-00021153-CU-MC-CTL (Ex.A), a print out of the ADA for Acton-Agua for 2013-2014 (Ex.B), the legislative history of the amendments to sections 47605 and 47605.1 (Ex.C), and the September 10, 2014 FCMAT report for Acton-Agua (Ex. D). The requests are granted. The requests are granted for Exs. B-D. Ev. Code §452(b), (c). While the tentative decision is also subject to judicial notice (Ev. Code §452(d)), it must be relevant. A non-binding decision from another superior court is not relevant. Moreover, Newhall attempts to use the decision for the truth of the findings and facts contained in it. This is not permissible, and the request is denied.

#### **2. Academy’s and Acton-Agua’s Requests for Judicial Notice**

Newhall moves to strike Respondents’ requests for judicial notice on the grounds that it contains improper argument and is disingenuous. The court has not considered any argument on the merits, and the latter ground is not a basis to strike. The motion is denied. CCP § 436.

The court rules as follows on the requests:

**Request No. 1:** The Court grants this request for Exhibit K (CDE’s Executive Summary Explaining the Academic Performance Index); Exhibit L (API Report for Santa Clarita Secondary). Ev. Code §452(c). The request is denied for Exhibit M (Newsweek Notice) as there is no legitimate basis for judicial notice.

**Request No. 2:** The court grants this request for Exhibits N-Q (website printouts showing no active or formerly active charter schools in Newhall, Castaic Union School District, Saugus Union School District, and Sulphur Springs School District) pursuant to People v. Vigil, (2008) 169 Cal.App.4th 8, 12, n.2.

**Request No. 3:** The court grants this request for Exhibit R (Acton-Agua Agenda-Special Meeting Minutes for May 16, 2013) pursuant to Ev. Code section 452(b) and Evans v. City of Berkeley, (2006) 38 Cal.4th 1, 9.



**Request No. 4:** The court grants this request for Exhibit S (Acton-Agua's June 12, 2014 Regular Board Meeting Agenda) pursuant to Ev. Code section 452(b) and Souza v. Westlands Water District, (2006) 135 Cal.App.4th 879, 886, n.1; and Exhibit T (Acton-Agua's June 12, 2014 Regular Board Meeting Minutes) pursuant to Ev. Code § 452(b) and Evans v. City of Berkeley, *supra*, 38 Cal.4th at 9.

**Request No. 5:** The court grants this request that Los Angeles Unified School District covers a geographic area of over 700 square miles, pursuant to Ev. Code section 452(h) and People v. Vigil (2008) 169 Cal.App.4th 8, 12, n2.

**Request No. 6:** The court grants this request that Newhall and Acton-Agua, and the Pinecrest site (located at 25443 Orchard Village Road, Santa Clarita, CA) are all located in the County. Ev. Code §452(h).

**Request No. 7:** The court grants the requests for Exhibit U (Thrive Charter School Charter Petition) pursuant to Ev. Code section 452(h) and People v. Vigil, *supra*, 169 Cal.App.4th at 12, n.2, for Exhibit V (California State Board of Education ("SBE") July 2014 Agenda) pursuant to Ev. Code section 452(b) and Souza v. Westlands Water District, *supra*, 135 Cal.App.4th at 886, n.1, and for Exhibit W (SBE Final Minutes July 9-10, 2014) pursuant to Ev. Code section 452(b) and Evans v. City of Berkeley, *supra*, 38 Cal.4th at 9.

**Request No. 8:** The court grants the requests for Exhibit X (SBE March 2009 Agenda) pursuant to Ev. Code § 452(b) and Souza v. Westlands Water District, *supra*, 135 Cal.App.4th at 886, n.1, and for Exhibit V (SBE Regular Board Meeting California Department of Education Board Room Final Minutes March 11-12, 2009) pursuant to Ev. Code § 452(b) and Evans v. City of Berkeley, *supra*, 38 Cal.4th at 9.

**Request No. 9:** The court grants the request for Exhibit Z (cover page, table of contents, and page 3 of Urban Discovery Academy's charter) pursuant to Ev. Code § 452(h) and People v. Vigil (2008) 169 Cal.App.4th 8, 12, n2. The court denies the request for Exhibit AA as it is not SDUSD's May 13, 2008 Board Agenda but an email. The court grants the request for Exhibit BB (SDUSD May 13, 2008 Board Meeting Minutes) pursuant to Ev. Code section 452(b) and Evans v. City of Berkeley, *supra*, 38 Cal.4th at 9.

**Request No. 10:** The court denies the requests for Exhibit CC (Resolute Academy Charter School petition) which is not an official act of an agency nor a matter not reasonably subject to dispute. The court grants this request for Exhibit DD (Board of Education of the City of Los Angeles Governing Board of the LAUSD Regular Meeting Stamped Order of Business) pursuant to Ev. Code section 452(b) and Souza v. Westlands Water District, *supra*, 135 Cal.App.4th 879 at 886, n.1.

**Request No. 11:** The court denies the request for Exhibit EE (Value Schools Charter Petition for Value Schools K-8#2).

**Request No. 12:** The court denies the request for Exhibit FF (Yav Pem Suab Charter School ("YPS") charter). The court grants the request for Exhibit GG (Sacramento County Unified School District's ("SCUSD") March 18, 2010 approved board minutes) pursuant to Ev. Code section 452(b) and Evans v. City of Berkeley, *supra*, 38 Cal.4th at 9.

**Request No. 13:** The court denies the request for Exhibit HH (Oakland Unified School District's staff recommendation of approval of Epic Charter Middle School's petition).

**Request No. 14:** The court grants this request for Exhibit II (LAUSD District Required Language for Independent Charter School Petitioner (New and Renewal) and Material Revisions 2014-2015), Exhibit JJ (LAUSD Charter Briefing Page), and Exhibit KK (New Independent Charter School Petition Application Guide for 2014-2015) pursuant to Ev.. Code section 452(c).

**Request No. 15:** The court grants this request for Exhibit LL (website printout showing High Tech High, a Statewide Benefit Charter, located in San Diego) pursuant to Ev. Code section 452(c) and People v. Vigil (2008) 169 Cal.App.4th 8, 12, n.2.

### **3. Acton-Agua's Requests for Judicial Notice**

The court denies Acton-Agua's requests for judicial notice of Exhibits 1 and 2. CRC 3.113(l) requires that a request for judicial notice be made in a separate document, but Acton-Agua improperly attaches them to the end of its opposition.

### **D. Statement of Facts<sup>2</sup>**

#### **1. Acton-Agua**

Respondent Acton-Agua (sometimes, the "District") is a school district at least 25 miles

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<sup>2</sup>Petitioner Newhall attempts to supplement its petition with new evidence on reply. "[T]he inclusion of additional evidentiary matter with the reply should only be allowed in the exceptional case and if permitted, the other party should be given the opportunity to respond." Jay v. Mahaffey (2013) 218 Cal.App.4th 1522, 1537-38. "[T]he trial court ha[s] discretion whether to accept new evidence with the reply papers." Alliant Ins. Services, Inc. v. Gaddy (2008) 159 Cal.App.4th 1292, 1308.

Some of the reply evidence is not proper. Newhall attempts to present a new opinion from its expert that there is space available in Acton-Agua for AES-SCV which should have been presented with the moving papers. The attached legislative history also should have been presented with the moving papers. The court exercises its discretion to consider only Exhibits 37, 38, 46, 47, and the Shapiro, Zittlau, Winger, Gibson, and Challinor declarations.

The court has ruled on the written objections of both Newhall and Academy, either by checking the appropriate box or by placing "S" for "sustained" and "O" for "overruled" next to the objection, and interlineating the original evidence where an objection was sustained. The vast majority of all the objections were overruled, sometimes under Fibreboard Paper Products Corp. v. East Bay Union of Machinests, (1964) 227 Cal.App.2d 675, 712 (if any portion of objected to material is admissible, objection may be overruled).

from Petitioner Newhall, separated from it by the Sulphur Springs and Saugus Union School Districts. Winger Decl., ¶3, Ex. 28. In 2014-2015, Acton-Agua will operate one elementary, one middle, and one high school. Stevens Decl., Ex.2, p.19. Acton-Agua owns two additional elementary schools, Agua Dulce Elementary School ("Agua Elementary") and Acton School. Approximately 2,200 school-aged children live in Acton-Agua's boundaries, but Acton-Agua's ADA has been falling due to declining enrollment. Its ADA for 2013-2014 was less than 1,300, reflecting 0.11 of the ADA in the County. Stevens Decl., Ex.2, p.39-40; Evans Decl., ¶19, Ex.19.

Agua Elementary and parts of Acton School have been made available to house Academy's charter elementary school (AEA-SCV) in 2013-2014 and 2014-2015. Agua Elementary will house two Academy charter schools in 2013-2014: AEA-SCV and Academy's Elementary School Partnership Academy ("Partnership Academy"). Acton School also has between five and ten useable classrooms. Evans Decl., ¶22, Ex.22.

Acton-Agua has received "negative certification" on its budgets for the last several years and is currently monitored by LACOE under its fiscal oversight authority. Evans Decl., ¶17, Ex.17. Negative certification occurs when a district will be unable to meet its financial obligations for the remainder of the current year or for the next year. Acton-Agua is also the subject of a Fiscal Crisis Management Assistance Team ("FCMAT") solvency study.

## **2. Academy**

Academy is a California nonprofit public benefit corporation that operates public charter schools. Shapiro Decl., ¶3. Jeffrey Shapiro ("Shapiro") is the Chief Executive Officer ("CEO") of Academy. Shapiro Decl., ¶¶1-2. As of the 2014-2015 school year, Academy operates the following charter schools: Santa Clarita Secondary (authorized by William S. Hart Union High School District), (2) AEA-SCV (authorized by Acton-Agua), (3) Partnership Academy (authorized by Acton-Agua), (4) Endeavour Academy (authorized by Alpine Union High School District), and (5) Albert Einstein Academy for Letters, Arts and Sciences of Westlake, Ohio. Shapiro Decl., ¶4.

Academy operates high performing charter schools, and its success has created demand for the schools it operates in the Santa Clarita Valley. Shapiro Decl., ¶¶5, 10. Academy also is the subject of a FCMAT audit to "investigate possible fraud." Evans Decl., Ex. 21.

## **3. Acton-Agua Charter School Procedure**

Acton-Agua has a process for review of charter petitions. Acton-Agua's Board (sometimes, the "Board") has adopted a Charter School Policy which provides petitioners with on-going guidance and opportunities to correct deficiencies with their petitions during the review process. Stevens Decl., Ex.9. The District encourages charter petitioners to submit a draft petition for preliminary review and comment. Stevens Decl., Ex.9, p.8. Charter School Coordinator Janet Simons then conducts a pre-petition interview with prospective petitioners to discuss any initial deficiencies with their petition and give them copies of materials Acton-Agua will use to review their petition. Stevens Decl., Ex.2, p. 130; Ex.7, pp.21; 36, Ex.9, pp.8-9.

When petitioners formally submit a charter petition, Ms. Simons schedules a public hearing before the Board and reviews the petition for basic procedural compliance with the

Education Code and Charter School Policy, noting any deficient elements on a petition review matrix. Stevens Decl., Ex.2, p.131; Ex.7, pp. 36-37; Ex.9, pp.28-29. Ms. Simons will inform the petitioners of any deficiencies so they have an opportunity to amend the petition and a public hearing is held by the Board to consider the level of community support for the petition. Stevens Decl., Ex.9, pp.28-29.

Next, Acton-Agua's Chief Financial Officer, Dr. Steve Budhreja, reviews all financial aspects of the petition and the Director of Education and Student Services, Meghan Freeman, reviews the entire petition for compliance with the Education Code. Stevens Decl., Ex.2, p.112; Ex.7, p.37; Ex.9, pp.28-29. District staff summarize their findings in a written recommendation to the Board. Stevens Decl., Ex.7, pp. 82-83. The petitioner then may be informed that Acton-Agua staff will recommend condition approval or denial so that petitioners have an opportunity to amend or withdraw their petition before the Board takes action. Stevens Decl., Ex.9, pp.29. Finally, the Board holds a public hearing to consider the petition, any supporting documentation, and the Acton-Agua staff's recommendation before resolving to approve, conditionally approve, or deny the petition. Stevens Decl., Ex.9, p.30.

The District's Charter School Policy provides for oversight of its charter schools. Stevens Decl., Ex.9, pp. 31-33, 38-41. Acton-Agua monitors charter schools' activity on a weekly basis (Stevens Decl., Ex.7, p. 39), assists charters with filling-out required paperwork and reports (*id.*, p.38), conducts training on best practices (*id.*, p.38, 42, 53), and visits operating charter school sites (*id.*, p.58). Dr. Budhreja provides reviews of charter schools' financial data throughout the school year (Stevens Decl., Ex.10, p.63), which includes questioning revenue assumptions (*id.*, p.65-66), and evaluating budgeted expenditures for everything from salaries and benefits to special education (*id.*, p.67, 68). Dr. Budhreja also assesses whether the charter schools can meet their cash-flow needs and whether they have a plan to address any shortcomings identified in their independent audits. *Id.*, p.68.<sup>3</sup>

#### **4. The May 16, 2013 Board Meeting**

On May 16, 2013, Acton-Agua's superintendent, Dr. Brent Woodard, told Acton-Agua's board that students were leaving the district in "droves," affecting ADA and having a negative impact on the district's budget. Evans Decl., ¶6, Ex.5, pp. 5-6. Dr. Woodard devised a plan he characterized as "a little radical" (Ex.5, p.25), explaining that Acton-Agua was embarking on "county-wide expansion" of high quality charters which were independent study programs by and large, proposing to go outside the district to build "a financial model for significant expansion" through charters. Evans Decl., ¶7, Ex.7, pp. 5, 36; Evans Decl., ¶¶8, 20, Exs. 8, 20. He explained the financial opportunity to Acton-Agua as follows: "basically out of the MOU", ... we were looking at potential of 3.5 percent of the gross ... which is what we get out of ALA [Assurance Learning Academy] and Einstein currently." Evans Decl., ¶7, Ex.7, p. 158.<sup>4</sup>

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<sup>3</sup>Dr. Budhreja consulted with Academy regarding these functions and raised concerns which were addressed. *Id.*, p.72-73, 78-79.

<sup>4</sup>Dr. Woodward subsequently reaffirmed to the Board at a December 12, 2013 meeting that "these schools will be in LA area and LA County. They will not be in our geographical

As Board Member Distaso explained at the meeting, "part of the charter school initiative that we're engaged in right now is to create an alternative source of funding so that we can maintain our local school and get out from underneath the havoc that's being wreaked on us by the state." Evans Decl., ¶7, Ex. 7, p. 166. The "alternative source of funding" created by the proposed "charter school initiative" includes non-negotiable agreements that charge each charter 3.5% of "gross" revenues generated by the charter school enrollment (projected at \$526,638 total for 2014-2015) (Evans Decl., ¶9, Ex. 9) and 3.0% of revenue for special education (Evans Decl., ¶10, Ex.10).

Board Member Layton stated he "would've liked to have seen it done legally," but he "[didn't] believe that [was] happening." Evans Decl., ¶6, Ex.5, p. 61. Mr. Layton explained that "nobody in [Acton-Agua] would like it if Santa Clarita or some other district came and put a school right in our area ... and sucked out all of our students and made our district even worse because that is not right." Evans Decl., ¶6, Ex.5, p. 62.

Member Ridenour responded that "on the idea that it's not right for us to put ... a school in somebody else's district or in their boundaries. I find it really interesting to hear it from these schools how upset they are about this possibility. ... because their concern ought to really be about the 1,000 kids in their area who have demanded the right to go to this school, right? They're not worried about that....[S]econd of all, these are folks that ... take approximately ... \$1 million a year from us and have been doing for years and years, uh, through the students that have uh, left our schools and gone there, right?" Evans Decl., ¶6, Ex.5, pp. 73-74.

Pursuant to this plan, Acton-Agua has authorized over 20 charter schools since Spring 2012, with all but one or two operating outside Acton-Agua's boundaries in surrounding districts. Evans Decl., Exs. 11, 12.

##### **5. The March 2013 Petition**

Acton-Agua parents have demanded more educational options, including charter schools, for their children. Stevens Decl., Ex.2, pp.59-60. Because Academy managed a charter school in a nearby district and Shapiro knew an Acton-Agua Board member (Stevens Decl., Ex.3, pp. 19, 45), the District's superintendent, Dr. Woodward, contacted Shapiro to discuss the prospect of submitting a charter application. Stevens Decl., Ex.3 p.42.

In March 2013, Academy submitted a charter petition to Acton-Agua for AEA-SCV. Shapiro Decl., ¶11, Ex. H. The charter petition did not identify the exact location of the charter school. The petition noted that Academy plans to lease facilities during the first years of operation, and in the long run build a facility in the Acton-Agua area. Although the intent was to lease a site in the attendance area of Acton-Agua, the petition stated that no suitable site currently exists there. Appropriate facilities have been found nearby "in a neighboring community that ideally suit the needs of the proposed school." The petition stated that the facility identified

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area." Evans Decl., ¶7, Ex.7, p. 14. The District's charter schools consultant told the Board at the same meeting: [B]ecause you have the authority as a school district to approve charters that may be serving students in South Los Angeles or East Los Angeles, you have the opportunity [to expand] well beyond what you might currently consider to be your sphere of influence. Evans Decl., Ex.7, p.26.

suited the specific needs of AEA-SCV and was suitable to house a school. Evans Decl., ¶14, Ex.14, p.141.

AEA-SCV's MOU with Acton-Agua required that Academy give the Board advance notice of any additional site and obtain Board approval of any lease. Winger Decl., Ex.16, p. 16-14.

Academy began looking for a facility for AEA-SCV in February or March 2013. Shapiro Decl., ¶12. Acton-Agua has limited space and resources available within its boundaries. Stevens Decl., Ex.2, p. 60. There is an "AM-PM and a few service stations and a couple restaurants." *Ibid.* Academy then located a facility in Saugus Union School District ("Saugus USD"). Stevens Decl., Ex.3, pp. 40-41.<sup>5</sup> During the initial search, Academy engaged two different real estate companies to search for them within Acton-Agua and Academy's CEO personally drove around Acton and Agua Dulce trying to identify potential facilities. Stevens Decl., Ex.3, pp. 69-70. Academy was informed by an April 2013 letter from its expert that no property was available in the Acton-Agua area. Shapiro Decl., ¶13, Ex.1.<sup>6</sup>

#### **6. The Charter Petition Approval**

On May 16, 2013, AEA-SCV's charter petition was one of two petitions approved by Acton-Agua's Board. Evans Decl., ¶13, Ex.13. The Board approved AEA-SCV's petition with the understanding that the school would locate in the within the boundaries of Saugus USD. Stevens Decl., Ex.3, p.68.<sup>7</sup> At no time during the meeting did the Board discuss whether notice had been given to any outside school district or that AEA-SCV sought to locate within Acton-Agua's boundaries and could not do so. *See* Evans Decl., Ex. 5.

AEA-SCV encountered problems actually securing a site within Saugus USD's boundaries. AEA-SCV then proposed a site on Rye Canyon in Santa Clarita ("Rye Canyon").

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<sup>5</sup>There are no charter schools in Newhall, Saugus USD, Castaic Union School District ("Castaic USD"), or Sulphur Springs School District ("Sulphur Springs"). Ebert Decl., ¶4, Exs.N-Q. Nonetheless, the Newhall and Castaic USD superintendents explain that their districts have no hostility to charter schools. *See* Reply Winger Decl., ¶3, Gibson Decl., ¶4.

<sup>6</sup>According to Newhall's real estate expert, Alan D. Wallace, this letter is conclusory and lacks a factual basis to make an assessment whether property was available within Acton-Agua's boundaries. Wallace Decl., ¶10. The letter did not meet the industry standard of practice because it did not set forth the search parameters, including the timeline, geographical boundaries, the types of property sought, or the methodology. Wallace Decl., ¶¶10-12.

<sup>7</sup>Newhall previously had denied Academy's elementary school charter petition because Newhall's board "determined the charter petition did not meet Education Code requirements . . . presented an unsound education program . . . was demonstrably unlikely to successfully implement the program set forth in the petition . . . not supported by the requisite number of parents and/or teachers . . . did not contain a reasonably comprehensive description of all of the elements required by the Education Code . . . [and] the fiscal plan for the charter was so deficient as to reflect that the charter school would not be fiscally viable." Winger Decl., ¶4.

Stevens Decl., Ex.3, pp. 40-41.

AEA-SCV was registered with the California Department of Education ("CDE") at the Rye Canyon site and assigned charter number 1595. Winger Decl., ¶12, Ex. 34. During the 2013-2014 school year, AEA-SCV's program was housed in Acton-Agua's two elementary school site facilities. Evans Decl., ¶5, Ex.4, pp. 26-27; Shapiro Decl., ¶11. The first was Agua Dulce Elementary which had limited excess rooms for AEA-SCV to use. Shapiro Decl., ¶14. The second was a vacant elementary school site, the Acton Campus, which had been non-operational for ten years. *Ibid.* In 2013-2014, AEA-SCV enrolled 625 students from the Santa Clarita Valley, including 82 from Newhall's area. *Ibid.* Acton-Agua granted AEA-SCV use of the Acton Campus for only a year because it was badly in need of renovation. Shapiro Decl., ¶15; Ebert Decl., Ex. QQ, pp. 19-20. At the end of 2013-2014, Academy understood that the Acton Campus would be closed for renovation. Shapiro Decl., ¶15.

#### **7. The June 4, 2014 Material Revision of the Charter**

In the Spring 2014, AEA-SCV began another search for a campus that was large enough to house 675 students in a 25,000 to 50,000 square foot area with 21 classrooms, adequate parking, proper zoning, and reasonable rent. Shapiro Decl., ¶¶ 15, 18. AEA-SCV used a second commercial realtor who was unable to locate any facilities meeting this criteria and sent a June 11, 2014 letter to this effect. Shapiro Decl., ¶20; Morrar Decl., ¶ 6-8, Ex. B.<sup>8</sup>

Academy then expanded its search and was able to identify a former private school, 25443 Orchard Village Road, Santa Clarita ("Pinecrest"), which is in Newhall's boundaries. Shapiro Decl., ¶21. Academy purchased Pinecrest in a sale/lease back arrangement. *Ibid.*<sup>9</sup> Pinecrest will serve as an overflow site for AEA-SCV as it will continue to operate part of its program at Agua Dulce Campus within Acton-Agua. *Id.*, ¶23.

Following the identification of Pinecrest, on May 12, 2014 AEA-SCV sought a material revision of its charter. Shapiro Decl., ¶ 27. The material revision addressed the location of AEA-SCV's facilities to reflect the new Pinecrest site and the Aqua Dulce Campus. Shapiro Decl., ¶27, Ex. J, p.140. AEA-SCV provided notice by letter to Newhall's superintendent on June 4, 2014 that it submitted a material revision to Acton-Agua to establish one site within Newhall's boundaries of NSD. Shapiro Decl., ¶28; Ruley Decl., ¶ 2, Ex.C.<sup>10</sup>

Acton-Agua's Board approved the material revision on June 12, 2014. Shapiro Decl., ¶27. On July 28, 2014, AEA-SCV provided notice to the Superintendent of LACOE and

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<sup>8</sup>As part of Academy's opposition, Two real estate experts opine by declaration that there is no single site within Acton-Agua's boundaries that could house the entire charter school. Morrar Decl., ¶6-8, Ex. B; Pike Decl., ¶¶ 11-14, 16.

<sup>9</sup>Academy partnered with an investor which purchased the property on May 6, 2014, and entered into an agreement with Academy to lease the property beginning on August 1, 2014. Evans Decl., Ex. 35, ¶7.

<sup>10</sup>Newhall had not been given notice prior to the May 16, 2013 charter approval. Winger Decl., ¶5.

the CDE's Superintendent of Public Instruction (the "Superintendent of Public Instruction") that it would be commencing operations at a location outside Acton-Agua's boundaries. Shapiro Decl., ¶ 28; Ruley Decl., ¶'s 3-4, Exs. D-E.

#### **8. The 2014-2015 School Year**

AEA-SCV began the 2014-2015 school year operating at Pinecrest on August 18, 2014. Shapiro Decl., ¶ 25. For 2014-2015, the total enrollment at AEA-SCV will be approximately 775 students, divided between the two facilities. Shapiro Decl., ¶23. Approximately 200 students will attend Agua Dulce Campus and 525 students will attend Pinecrest. *Ibid.* Academy plans also to use the Agua Dulce Campus for another school, Partnership Academy. *Ibid.*<sup>11</sup>

Academy has opened another site outside Acton-Agua and within Newhall's boundaries to serve K-12 students at His Way Church, located at 23670 Wiley Canyon Road ("His Way Church"). Winger Decl., Ex. 29. His Way Church is an independent study, non-classroom, meeting space. Shapiro Decl., ¶32. No student in Academy's independent study programs is required to be on campus for more than 79% of the instructional minutes required by law. *Ibid.*

In June or July 2013, Academy leased the Rye Canyon site, which is in the Castaic USD. Evans Decl., Exs.15, 24. The Rye Canyon site is not "used for any purpose and is not a site of AEA-SCV. Shapiro Decl., ¶31.

#### **D. Governing Law**

The Constitution provides for the provision of public education through "a system of common schools." Cal. Const., art. IX, § 5. It specifies the creation and organization of school districts at the local level. Cal. Const., art. IX, § 14. "[U]nder the Constitution, the public schools themselves exist at the district level and are governed by the school districts." *Mendoza v. State*, (2007) 149 Cal.App.4th 1034, 1041. "Every school district shall be under the control of a board of school trustees or a board of education." §35010(a).

"Charter schools are public schools that operate independently from, but with oversight by, the school districts or county boards of education that approve their charters." *California School Boards Ass'n v. State Bd. of Education*, ("School Boards") (2010) 186 Cal.App.4th 1298, 1305. The "system of common schools" required by the California Constitution includes charter schools, which are a constitutional creation of the Legislature. *Wilson v. State Bd. of Education*, ("Wilson") (1999) 75 Cal.App.4th 1125, 1135-36. The Legislature's broad powers include the discretion to determine the types of programs, like charter schools, will further education in the State. *Id.* at 1134-35.

In 1992, the Legislature enacted a statutory scheme, the Charter School Act ("CSA"), to allow the establishment and operation of charter schools. §47600 *et seq.* "From how charter schools come into being, to who attends and who can teach, to how they are governed 'and structured, to funding, accountability and evaluation the Legislature has plotted all aspects of their existence." *Wilson, supra*, 75 Cal.App.4th at 1136. The Legislature's intent was to provide

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<sup>11</sup>The Partnership Academy charter was approved in February 13, 2014, nearly a year after AEA-SCV and many months after AEA-SCV was located at the Agua Dulce Campus. See Evans Decl., Ex.18.



“vigorous competition within the public school system to stimulate continual improvements in all public schools. §47601.

A charter school is established by submitting to the governing board of a school district a petition signed by a specified percentage of parents or teachers. §47605(a)(1). The petition must contain a “reasonably comprehensive” description of numerous pedagogical, administrative, and financial components. §47605(b)(5)(A)-(P); School Boards, *supra*, 186 Cal.App.4th at 1307. After a public hearing, the district board decides whether to grant or deny the petition, “guided by the intent of the Legislature that charter schools are and should...be encouraged.” §47605(b). A district board’s discretion to deny a charter petition is limited. The district must grant the petition if it finds that the charter is consistent with sound educational practices, and must provide written factual findings if it denies the petition. School Boards, *supra*, 186 Cal.App.4th at 1307, 1317-18 (plain language of section 47605.8 requires State Board to make finding of statewide benefit from applicant’s instructional services which cannot be provided under local charters). If the district’s board denies the petition, it may be effectively appealed to the county board of education, and then to the State Board of Education. §47605(j)(1). The body that grants the charter is the chartering authority and is required to carry out statutorily mandated oversight duties. School Boards, *supra*, 186 Cal.App.4th at 1307.

In 2002, the Legislature amended the CSA to include the addition of strict geographical restrictions for the operation of charter schools. *Ibid.* The impetus of the amendments was the Superintendent of Public Instruction’s concern that charter schools were opening multiple satellites operating a considerable distance from their home charter facility. Thus, the amendments were sought to tighten oversight of charter schools by prohibiting the establishment of schools that would operate in locations geographically distant from their chartering agencies. *Id.* at 1319. A legislative history analysis commented that “[b]y placing a geographic restriction on a charter school’s operations, this bill would help clarify a district’s sovereignty over public education provided within its boundaries and [would] enhance oversight of charter schools.” *Id.* at 1308 (citation omitted).<sup>12</sup>

The 2002 amendments provided that, with limited exceptions, a petition for a charter school within a school district “shall identify a single charter school that will operate within the geographic boundaries of that school district.” §47605(a)(1). *See also* §47605(g) (the petition’s description of the facilities to be used by the charter school shall specify where the school intends to locate).<sup>13</sup> The school may operate at multiple sites within the district so long as each location

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<sup>12</sup>As Academy argues, this statement of a district’s “sovereignty over public education” is overbroad because a number of entities share in the responsibility for public education, including school districts, county offices of education, the State Board, and charter schools. Acad. Opp. at 4-5.

<sup>13</sup>The pertinent language of section 47605(a)(1) is: “. . . 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.

is identified in the petition. §47605(a)(1).<sup>14</sup>

An exception to the geographical restriction exists if a school has unsuccessfully attempted to locate a single site within the district to house its program. In that case, the school may establish one site outside the district and within the same county. §47605(a)(5);<sup>15</sup> School Boards, *supra*, 186 Cal.App.4th at 1309.<sup>16</sup>

### **E. Analysis**

Petitioner Newhall seeks mandamus finding Acton-Agua's approval of the charter for AEA-SCV to be void, precluding the operation and/or operation of AEA/SCV outside the geographical boundaries of Acton-Agua. Op. Br. at 15. The court's review of the initial charter approval is limited to an examination of the proceedings before Acton-Agua to determine whether its action was arbitrary, capricious, or entirely lacking in evidentiary support, or whether it did not follow the procedure and give the notices required by law. Western States Petroleum Assn. v. State Dept. of Health Services, *supra*, 99 Cal.App.4th at 1018.

### **1. Preliminary Issue**

As a threshold matter, all parties have proceeded inconsistently with the law. While the issue is debatable, School Boards indicates, and Newhall contends (Op. Br. at 8), that Acton-Agua's decision to charter AEA-SCV is quasi-legislative. *See* 186 Cal.App.4th at 1314, n.12 (since approval of charter school creates school district, it is quasi-legislative in nature). An administrative record is required for quasi-legislative decisions. Western States, *supra*, 9 Cal.4th at 575. Petitioner acknowledges this point in citing McBail & Co. v. Solano County Local

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<sup>14</sup>The same restrictions apply to a school chartered by a county board of education or the State Board. School Boards, *supra*, 186 Cal.App.4th at 1308. Nothing in the CSA either prohibits or discourages a charter school entity from establishing and operating charter schools in multiple districts around the state under a series of district- or county-approved charters. School Boards, *supra*, 186 Cal.App.4th at 1316-17.

<sup>15</sup>Sections 47605(a)(5) provides: "...[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, [1] if the school district within the jurisdiction of which the charter school proposes to operate is notified in advance of the charter petition approval, [2] the county superintendent of schools and the Superintendent are notified of the location of the charter school before it commences operations, and [3] 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." *See also* §47605.1(d)(same substantive language).

<sup>16</sup>Academy correctly notes that section 47605(a) and 47605.1(d) restrict the out-of-district site to the county where the authorizing district is located, implicitly determining that a school district can properly oversee charter schools within those geographical limits. Acad. Opp. at 6.

Agency Formation Commission, (“McBail”) (1998) 62 Cal.App.4th 1223, 1230 and in arguing that the “record” must reflect consideration of all relevant factors applicable to the decision. Op. Br. at 11.

Yet, the parties failed to present an administrative record, and instead have presented abundant extra-record evidence as if the court’s review of the Board’s May 16 decision is traditional mandamus concerning a mandatory ministerial duty. *See* Local Rule 3.231(h). For example, both sides present expert testimony about the availability of a school location within the boundaries of Acton-Agua, and whether AEA-SCV is complying with its charter, none of which was before the Acton-Agua Board at the time it approved the charter or its material revision. Extra-record evidence is generally impermissible in the review of quasi-legislative decisions. Western States, *supra*, 9 Cal.4th at 575.

Because an administrative record was required, the court will consider for the May 16 charter approval only evidence that would have been before the Acton-Agua Board.

## **2. The Petition’s Failure to Identify the Intended Location**

Section 47605(g) provides: “The [petition’s] description of the facilities to be used by the charter school shall specify where the school intends to locate.” §47605(g).<sup>17</sup>

Petitioner Newhall argues that, in accordance with the stringent geographical restrictions in the 2002 amendments to the CSA, the identification of a location within the school district is a fundamental requirement for any party seeking the establishment of a charter school. AEA-SCV’s charter petition did not identify, describe, or specify where the charter school would be located. To the contrary, the petition merely stated that “appropriate facilities have been found nearby in a neighboring community that ideally suits the needs of the proposed school.” Evans Decl., Ex.14, p.141.

As a result, Petitioner contends that Acton-Agua’s Board failed to comply with CSA’s procedures in approving the charter petition. There was no way of knowing which “neighboring community” was targeted for the charter school’s location or if it refers to another school district. In fact, at the May 16 meeting, a member of the public commented that she could not figure out where the charter school would be located from reading the petition. Evans Decl., Ex.5, p.46. Op. Br. at 11.

According to Newhall, the charter’s location later became a moving target. As of May 16, 2013, Acton-Agua’s Board understood the location would be within Saugus USD. AEA-SCV then proposed a site on Rye Canyon. Ultimately, the charter school operated for one year in Acton-Agua. Petitioner Newhall argues that the action of Acton-Agua’s Board to approve a charter petition completely untethered to any physical location was arbitrary and capricious and fully disconnected from the purpose of the CSA, which provides for establishment of charter schools subject to local oversight under stringent geographical restrictions. *See School Boards*, *supra*, 186 Cal. App. 4th at 1308. Op. Br. at 11.

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<sup>17</sup>Section 47605(a) provides: “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.” §47605(a). As Academy points out, the petition identified AEA-SCV as the single charter school. Acad. Opp. at 7.

The court agrees that AEA-SCV's petition did not comply with the express language of section 47605(g) by identifying the location where its facilities would be housed. The petition merely noted that Academy plans to lease facilities during the first years of operation, and in the long run build a facility in the Acton-Agua area. Although the intent was to lease a site in the attendance area of Acton-Agua, the petition stated that no suitable site currently exists there. Appropriate lease facilities have been found nearby "in a neighboring community that ideally suit the needs of the proposed school." The petition stated that the facility identified suited the specific needs of AEA-SCV and was suitable to house a school. Evans Decl., ¶14, Ex.14, p.141

Academy argues that section 47605(g) is not a requirement of the charter petition, but rather is a requirement to inform the district about intended facilities without regard to timing or means of delivery of the information. Academy contends that the CSA recognizes the realities of charter school development, and it is impractical to require identification of a site in the petition where the school has no right to operate, no students, and no funding. Under Prop. 39, the school may request the district to provide the facilities, and the petitioner would have no way of knowing the specific location in its petition. Acad. Opp. at 8.

It is true that section 47605(g) does not expressly require that information be included in the petition. However, section 47605(a)(1) requires that the petition identify the sites within the district which the petitioner seeks to use. Section 47605(g) requires a petitioner only to identify an intended location. Coupled with section 47605(a)(5) and the purpose of the 2002 amendments to the CSA, it seems clear that section 47605(g)'s identification must occur in the petition. It makes no sense for a charter school to have to identify the locations within the district which it will use without also having to identify the sole intended location outside the district permitted by section 47605(a)(1). Academy was obligated to identify its intended out-of-district location in the charter petition.

Academy's petition revealed that a proposed site had been found in a neighboring community, but failed to specifically identify that site. Identification of site location was particularly important in light of the geographical restrictions of section 47605(a)(5) -- that there may be a single site outside the district only if the school has attempted unsuccessfully to locate a single site or facility to house the program within district. The failure to identify the site resulted in confusion for members of the public, but the Board understood that the proposed site was located in Saugus USD.

As Acton-Agua argues (Acton Opp. at 7), the petition's failure to specifically identify the initial site for location of the charter facilities is not fatal to the charter approval. The Board had full discretion to decide what level of detail to require in the petition on AEA-SCV's intended location. The fact is that the parties' MOU required Academy to give the Board advance notice of any change in sites and to obtain Board approval of any lease. Winger Decl., Ex.16, p.16-14. Thus, the Board always controlled the location of AEA-SCV for purposes of compliance with the CSA.

The CSA permits a board to deny a petition if, *inter alia*, the board believes a petition fails to contain "reasonably comprehensive descriptions" of 16 elements. §47605(b)(5)(A)-(P). These elements concern academic, pedagogical, admission, employment, and student disciplinary issues, and none of them concern the charter's location and facilities. See *ibid*. It is clear that the CSA gave the Board discretion to accept a petition that fails to specify the intended school

location, whether within or outside the district, and control the location of the school site through its MOU.

Petitioner argues that the Board also may deny a petition where the “petitioner is “demonstrably unlikely to successfully implement the program.” §47605(b)(2). They contend that a petitioner is demonstrably unlikely to succeed where the charter and supporting documents do not adequately describe the type and location of proposed facilities. Reply at 3. This is a *non-sequitur*. There is little relationship between a successful program and a technical failure to identify the school facility. In any event, Acton-Agua’s Board had full discretion to address the issue through the MOU.

In sum, the AEA-SCV charter petition did not fully comply with section 47605(g)’s requirement that the intended school location be specified. Nonetheless, the petition reflected that an intended location had been found, and the Acton-Agua Board knew it was in Saugus USD. The Board had discretion to require more complete information later, and to compel compliance with the CSA through the provisions of the parties’ MOU.

### **3. Board Findings Were Required**

Petitioner Newhall argues that the Acton-Agua Board’s May 16, 2013 approval of the AEA-SCV petition is arbitrary and capricious because it does not contain affirmative findings that (1) AEA-SCV could not locate its facility within Acton-Agua’s boundaries and (2) AEA-SCV gave statutory notice to the district where the charter school proposes to locate prior to charter petition approval, and (3) AEA-SCV gave notice to the LACOE superintendent and Superintendent of Public Instruction prior to locating outside those boundaries. Op. Br. at 11-12.

Both Academy and Acton-Agua argue that no factual findings are required to approve a charter petition. Acad. Opp. at 7; Acton Opp. at 10-13.

Section 47605(b)’s direction for a board to grant a charter if consistent with sound educational practice says nothing about requiring findings of fact. The CSA only expressly requires written findings of fact in two situations, and requires a statement of basis for determination in a third situation.

A petition may be denied, pursuant to “written factual findings, specific to the particular petition, setting for specific facts” on one or more of five issues: (1) the charter school presents an unsound educational program, (2) the petitioners are demonstrably unlikely to successfully implement the program, (3) the petition does not contain the requisite signatures, (4) the petition does not contain an affirmation of conditions required in section 47605(d), and (5) the petition does not contain reasonably comprehensive descriptions of various educational, racial and admission requirements, audits, student discipline, and other procedures. §47605(b).<sup>18</sup>

A board “shall not revoke a charter, unless it makes written factual findings supported by

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<sup>18</sup>When a district board denies a petition, the petitioner may submit the petition to the county board of education. §47605(j). While the denial must be supported by “written factual findings,” the county board reviews the petition *de novo*. *Ibid*.

substantial evidence, specific to the charter school, that support its findings. §47607(e).<sup>19</sup>

Finally, renewal of a petition on the basis of academic performance comparisons to similar schools requires the chartering authority to submit “supporting documentation and a written summary of the basis for any determination” to the Superintendent of Public Instruction. §47607(b)(4)(C).

In contrast, the CSA does not expressly require findings of fact where a district grants a charter petition. Nor does Acton-Agua policy require written findings in support of charter approval. Stevens Decl., Ex. 9, p.30. At least prior to 2002, the CSA’s failure to require express findings in granting a charter petition is consistent with its purpose that charter schools should be encouraged (§47605(b)), and a district board’s discretion to deny a charter petition is limited. See School Boards, *supra*, 186 Cal.App.4th at 1307, 1317-18.

Despite the fact that the CSA requires factual findings only where a district denies a petition or revokes a charter, Petitioner notes that an agency’s quasi-legislative does not meet the test of substantial evidence and is arbitrary and capricious where the record does not reflect consideration of the all relevant factors applicable to the decision. McBail, *supra*, 62 Cal. App.4th at 1229-30.<sup>20</sup>

In McBail, a local agency formation commission (“LAFCO”), which addresses city expansion to unincorporated areas, considered a city’s application to annex county land owned by the petitioners. *Id.* at 1225-26. Judicial review of LAFCO decisions is governed by Govt. Code section 56107, which gives courts the authority to determine whether a legislative act is not supported by substantial evidence in light of the administrative record. *Id.* at 1228, n.5. The LAFCO’s written policies required it to “make findings” specific to each of 11 standards governing its approval or denial of an application. *Id.* at 1229. The appellate court concluded that LAFCO’s own policies required reasoned findings and, even if they did not require a statement of reasons, such a statement is required in order to evaluate whether the agency action adopting a particular order, rule, regulation or policy is reasonable rather than arbitrary, capricious, or entirely lacking in evidentiary support. *Ibid.* (citing California Hotel & Motel Assn. v. Industrial Welfare Commission, (“California Hotel”) (1979) 25 Cal.3d 200, 210-11). This enables the public to anticipate agency action and shape its conduct accordingly, and stimulates public confidence in agency action. *Ibid.* Where a commission or agency has failed to state the reasons for its decision, “it is impossible for a court to determine whether the order and reasons are adequately supported by facts in the administrative record.” *Id.* at 1230 (citing California Hotel). The McBail court stated that a written statement of reasons is preferred, but is

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<sup>19</sup>A county board of education may reverse a district board’s decision to revoke a charter if “the findings made by the chartering authority... are not supported by substantial evidence.” §47607(f).

<sup>20</sup>Petitioner also cites International Medication Systems, Inc. v. Assessment Appeals Bd. (1997) 57 Cal. App. 4th 761, 767, but that case merely states that if an agency fails to comply with constitutional due process requirements for notice, its action is void. Due process does not apply to quasi-legislative agency decisions. See Calvert v. County of Yuba, (2006) 145 Cal.App.4th 613, 622.

not necessary to a determination of the substantiality of the evidence if the record adequately reflects the reason and basis for that decision.

There is no reason that the findings requirement is not also true for charter approvals. Only if the CSA intended not to permit any judicial challenge to a charter approval would findings not be necessary. Particularly in light of the 2002 amendments imposing geographical limitations on charters, the CSA permits judicial review of a charter approval. Without findings or a statement of basis, the court cannot determine whether Acton-Agua Board's decision is supported by facts in the record, and that the district considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute. Ridgecrest Charter School v. Sierra Sands Unified School District, ("Ridgecrest") (2005) 130 Cal.App.4th 986, 1006 (requiring findings in district's discretionary decision on charter school request for facilities). Findings also enable the public to anticipate when charters will be approved and stimulates public confidence in charter approvals.

Acton-Agua argues that it would be a mistaken reading of McBail to conclude that the record in this matter only encompasses the May 16, 2013 Board resolution and public discussion, and that the record should consist of all the pleadings, declarations, and exhibits presented to the court. Acton Opp. at 11-12. Acton-Agua is confusing the court's record of judicial proceedings with the administrative record. The latter consists only of matter before Acton-Agua's Board when it approved the charter or its material revision.<sup>21</sup>

In land use cases, an agency's quasi-judicial decision is subject to the rule in Topanga Ass'n for a Scenic Community v. County of Los Angeles, ("Topanga") (1974) 11 Cal.3d 506, 514-15. See City of Rancho Palos Verdes v. City Council, (1976) 59 Cal.App.3d 869, 885. This means that the agency decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. Topanga, 11 Cal.3d at 15. Less formality is required for findings in land use cases, which are sufficient if they inform the parties and the court whether the decision is based on lawful principles. Id. at 514-16. A transcript of taped oral remarks by the decision-maker at a public hearing when rendering a decision can be considered. City of Carmel-by-the-Sea v. Board of Supervisors, (1977) 71 Cal.App.3d 84, 92. The agency need not make express findings of its own in reach a decision, and may incorporate by reference a staff report as its implied findings. McMillan v. American General Financial Corp., (1976) 60 Cal.App.3d 175, 183-85. However, a mere recitation of statutory language, terse statements, and boilerplate findings do not contain sufficient details to bridge the analytic gap. Glendale Memorial Hospital & Health Center v. State Dept of Mental Health, (2001) 91 Cal.App.4th 129; City of Carmel-by-the-Sea v. Board of Supervisors, *supra*, 71 Cal.App.3d at 91.

The Board's May 16, 2013 approval is a quasi-legislative, not a quasi-judicial, decision, but the permissive nature of findings for land use findings is instructive. Written findings in

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<sup>21</sup>The court agrees with Acton-Agua that School Boards is distinguishable as a case involving State Board approval of a state-wide charter school where written findings were required by statute (186 Cal.App.4th at 1305), and Ridgecrest is distinguishable as explicitly limited to "whether, and to what extent, a district is required to explain its action on a facilities request." Acton Opp. at 12-13. But the distinctions do not undermine the principle that review is impossible without findings.

quasi-legislative cases are not required because no person has a right to the adoption of legislation. See City of Santa Cruz v. Local Agency Formation Commission, (1978) 76 Cal.App.3d 381, 389. Thus, while the findings need not be written, they could be contained in the Acton-Agua Board's May 16, 2013 approval of the AEA-SCV petition.

Where any findings made? Petitioner contends that the record of the Board meeting on May 16, 2013 is devoid of any discussion, consideration, or factual findings that AEA-SCV sought to locate within Acton-Agua's boundaries, and could not do so. See Evans Decl., Ex.5.

The transcript shows that the plan to locate charter schools outside Acton-Agua was discussed. Ex.5, p.5-6, 25. The location of AEA-SCV in Saugus USD also was mentioned. Ex.5, p.66. AEA-SCV's inability to find a location in Acton-Agua was not mentioned, however. As Newhall argues, this is not surprising in light of Acton-Agua's plan to authorize charters outside the district and county-wide. See Mot. at 12. The Board also did not discuss, and made no finding, concerning notice to Saugus USD.

In sum, the May 16 decision contains no findings, written or oral, that (1) AEA-SCV could not locate its facility within Acton-Agua's boundaries and (2) AEA-SCV gave statutory notice to the district where the charter school proposes to locate prior to charter petition approval.

#### **4. The Record Contains Substantial Evidence Exists to Support AEA-SCV's Location Outside Acton-Agua**

There is substantial evidence in the record that AEA-SCV was unable to locate a single site within Acton-Agua's boundaries in which to house its entire program.

Acton-Agua has limited space and resources available within its boundaries. Stevens Decl., ¶4, Ex.2, p. 60. There is an "AM-PM and a few service stations and a couple restaurants." Ibid.

Academy began looking for a facility for AEA-SCV in February or March 2013. Shapiro Decl., ¶12. During the initial search, Academy engaged two different real estate companies to search for them within Acton-Agua and Academy's CEO personally drove around Acton and Agua Dulce trying to identify potential facilities. Stevens Decl., Ex.3, pp. 69-70. Academy was informed by an April 2013 letter from its expert that no property was available in the Acton-Agua area. Shapiro Decl., ¶13, Ex.I. Academy then located a facility in Saugus USD. Stevens Decl., Ex.3, pp. 40-41.

Academy also has the opinions of two real estate experts that there was no single site within Acton-Agua's boundaries that could have housed the entire charter school. Morrar Decl., ¶6-8, Ex. B; Pike Decl., ¶¶ 11-14, 16.

After charter approval, AEA-SCV operated in its first year out of two school sites within Acton-Agua's boundaries. This is corroborating circumstantial evidence that AEA-SCV was unable to locate a single site to house its entire school in district boundaries.<sup>22</sup>

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<sup>22</sup>Newhall relies on the fact that AEA-SCV was able to locate in Acton-Agua boundaries as showing it did not need to locate outside the district, but ignores the unavailability of the Acton Campus for the following year (2014-2015), as well as section 47605(a)(5)'s permission for an out-of-district site where the charter school cannot find a single in-district site to house the entire program.



Some of this evidence, such as the opinions of the experts and the post-approval evidence, was not presented to the Board for its May 16 decision and may not be considered.<sup>23</sup> However, the Board certainly knew about the limited space and resources within district boundaries. The charter petition also expressly states: "After a thorough search by qualified real estate professionals, no suitable site currently exists in the attendance area of the Act-Agua Unified School District..." The petition then purported to attach the realtor's letter. Shapiro Decl., Ex. H, p. 141.<sup>24</sup>

There is substantial evidence in the record that Academy's unfruitful search for space in the district was presented to the Board.<sup>25</sup>

#### **5. The June 12, 2014 Material Revision**

Newhall claims it is telling that, after the May 16 approval, Academy abandoned its plans to locate in Saugus USD and it shifted its focus to another outside district, Castaic USD. Coupled with the denials by Saugus USD of Academy's earlier petitions, Petitioner argues that this shows that Academy never intended AEA-SCV to locate within Acton-Agua's boundaries and was always seeking to get established in one of the neighboring Santa Clarita districts. This view is supported by the fact that AEA-SCV's 2013-14 enrollment included only 19 residents of Acton-Agua, while 283 were from Saugus USD, 89 from Sulphur Springs USD, 58 from Castaic USD, and 82 from Newhall. According to Newhall, any findings that AEA-SCV had attempted to locate within Acton-Agua's boundaries would have been suspect. Mot. at 12.

In opposition, Academy relies on evidence that in the Spring 2014, AEA-SCV began

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<sup>23</sup>The opinion of Newhall's expert that the realtor's letter was conclusory and did not meet the standard of practice also may not be considered. See Wallace Decl. ¶¶ 10-12. If it were, the court would agree that it lacks foundation. Generalized complaints, speculation and unsupported conclusions do not constitute substantial evidence. Pala Band of Mission Indians v. County of San Diego, (1998) 68 Cal.App.4th 556.

<sup>24</sup>The court could not find this letter in Shapiro Ex.H.

<sup>25</sup>Newhall did not receive notice that Academy intended to locate its Acton-Agua-authorized charter school within Newhall's boundaries "in advance of the charter petition approval" on May 16, 2013. Nor is there any evidence that LACOE's superintendent or the Superintendent of Public Instruction received any notification prior to May 16. Mot. at 12.

These facts are irrelevant. Section 47605(a)(5) requires that "the school district within whose jurisdiction the charter school proposes to operate is notified in advance of the charter petition approval, and the county superintendent of schools and the Superintendent of Public Instruction are notified of the location of the charter school before it commences operations." On May 16, 2013, Newhall was not the district where AEA-SCV proposed to locate. Saugus USD was, and there is no evidence that AEA-SCV did not notify Saugus USD before the charter petition was approved. The LACOE superintendent and the Superintendent of Public Instruction need only be notified before commencement of operations, and AEA-SCV notified both before it opened Pinecrest.

another search for a campus that was large enough to house 675 students in a 25,000 to 50,000 square foot area with 21 classrooms, adequate parking, proper zoning, and reasonable rent. Shapiro Decl., ¶¶ 15, 18. AEA-SCV used a second commercial realtor who was unable to locate any facilities meeting this criteria and sent a June 11, 2014 letter to this effect. Shapiro Decl., ¶20; Morrar Decl., ¶ 6-8, Ex. B. Academy's experts opine that there was no single site within Acton-Agua's boundaries that could house the entire charter school at this time either. Morrar Decl., ¶6-8, Ex. B; Pike Decl., ¶¶ 11-14, 16.

Academy then expanded its search and found a former private school, Pinecrest, which is in Newhall's boundaries. Shapiro Decl., ¶21. Academy purchased Pinecrest in a sale/lease back arrangement to serve as an overflow site for AEA-SCV as it will continue to operate part of its program at Agua Dulce Campus within Acton-Agua. *Id.*, ¶23.

None of this post-approval conduct is relevant to the Acton-Agua Board's May 16 approval. If admissible, however, it is relevant to the June 12, 2014 material revision of the charter.

Following the identification of Pinecrest, on May 12, 2014 AEA-SCV sought a material revision of its charter petition pursuant to section 47607(a)(1). "A material revision of the charter petition may be made only with the approval of the authority that granted the charter. §47607(a)(1). They are "governed by the standards and criteria in Section 47605 [.]". §47605(a)(2).

These are the same standards and criteria that govern the initial approval of a charter petition. Thus, a material revision goes through the same review as an initial charter petition. This means that the timing and notice requirements of section 47605(a)(5) for a material revision locating a site outside district boundaries apply to the material revision. Shapiro Decl., Ex.J. The presentation of information required by section 47605(a)(5) concerning the charter school's inability to locate a single site or facility in the district, and notice to the outside district may occur in connection with this material revision.

Petitioner Newhall argues that section 47605(a)(1) applies to petitions for the "establishment" of a charter school, not material revisions of already established charter schools. According to Newhall, section 47605.1(d) supports this conclusion by providing that the outside district must be notified "in advance of the charter approval." An original petition also differs from a material provision in that it has signature requirements and can be appealed if denied. §§ 47605(a)(1)(A)-(B), 47605(j). Reply at 5.

This argument is a red herring. It is simply impossible for a material revision involving a change in location of a charter school from inside to outside the district after charter approval to be supported any way other than through material revision.

Petitioner also argues that, since material revisions are governed by the standards and criteria of section 47605, a public hearing was required. Section 47605(b) requires a public hearing before approval or denial of the petition. No public hearing occurred when the Acton-Agua Board approved the material revision on June 12, 2014 because the agenda listed it only as an action item and not a noticed public hearing. Reply at 5-6. *See* Evans Decl., Ex.12.

This presents an issue whether the "standards and criteria" of section 47605 governing material revisions include its procedures, most particularly the requirement of a public hearing. Section 47605(b) requires a public hearing on the provisions of the charter at which the district

considers the level of support for the petition by teachers, district employees, and parents. §47605(b).

The term “standards and criteria” is substantive in nature. Arguably, it does not include procedure such as a public hearing. Acton-Agua and Academy do not dispute that section 47605(a)(5)’s procedural notice requirements for approval of an out-of-district school site apply to a material revision, but these are substantive requirements which AEA-SVC must meet to obtain approval. There is no other procedure set forth in section 47605 which could apply to a material revision. Material revisions also are lumped together with charter renewals under section 47607(a)(1) and (2). Both are governed by the “standards and criteria” of section 47605. There is no suggestion that a charter renewal requires a public hearing, and the submissions to the Superintendent of Public Instruction and that officer’s recommendation suggest that none is required. Thus, it is not at all clear that a public hearing was required for the material revision.

Whether or not a public hearing was required for a material revision, it is not clear that Acton-Agua’s approval of a material revision was quasi-legislative as opposed to quasi-judicial. Unlike the initial charter approval, the material revision approval did not create a school district under section 47612; the charter school district already existed. If a quasi-judicial decision is ministerial or informal in nature and the facts are in dispute, extra-record evidence may be necessary for adequate review “because there is often little or no administrative record in such cases. *See Friends of the Old Trees v. Department of Forestry & Fire Protection*, 91997) 52 Cal.App.4th 1383, 1390 (agency requirement of accepting and considering evidence from interested parties before making decision created a sufficient record even without hearing).

The only requirement for a material revision is the submission of a revised petition under section 47605 without evidence from interested parties. Consequently, and unlike the initial approval, review of the material revision is a mandamus review of a quasi-judicial discretionary decision. *See Rodriguez v. Solis*, (1991) 1 Cal.App.4th 495, 501-02. The court may consider the parties’ extra-record evidence because there is no sufficient administrative record. Academy’s evidence of its search for a campus in the Spring 2014, use of a commercial realtor who was unable to locate any facilities meeting the criteria, expert opinion that there was no single site within Acton-Agua’s boundaries that could house the entire charter school, and its expanded search and location of Pinecrest are all relevant facts.

The material revision petition addressed the location of AEA-SCV’s facilities to reflect the new Pinecrest site and the Aqua Dulce Campus. Shapiro Decl., ¶27, Ex. J, p.140. They mention that Aqua Dulce is not large enough to house the entire AEA-SCV, no suitable site exists in Acton-Agua, and the school has found the Pinecrest site, which is suitable. *Id.*<sup>26</sup>

Acton-Agua’s Board approved the material revision on June 12, 2014. Shapiro Decl., ¶27. Notification to Newhall prior to approval of the material revision satisfies the timing requirements in sections 47605(a)(5) and 47605.1(d) of “in advance of charter petition approval.” AEA-SCV provided notice by letter to Newhall’s superintendent on June 4, 2014. Ruley Decl., ¶2, Ex.C. On July 28, 2014, AEA-SCV provided notice to the Superintendent of LACOE and

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<sup>26</sup>Petitioner’s argument that Academy never intended AEA-SCV to locate within Acton-Agua’s boundaries and was always seeking one of the neighboring Santa Clarita districts goes to AEA-SCV’s motivation, but does not undermine Acton-Agua’s approval.

the Superintendent of Public Instruction that it would be commencing operations at a location outside Acton-Agua's boundaries. Shapiro Decl., ¶ 28; Ruley Decl., ¶'s 3-4, Exs. D-E.

In reply, Newhall argues that the notice was not adequate. It argues that the approximately one week of notice (June 4 letter to June 12 approval) is insufficient as a matter of due process. Notice must be adequate to inform the governing board of the affected district to act by inquiring into why the school is being located in its district, and to object. District boards rarely meet more than twice a month, and notice of at least 30 days was required. In fact, Newhall met only before and after the dates of June 4 and June 12. Reply at 7.

This argument is improperly raised in reply. Newhall's moving papers argued only that it did not receive notice prior to the May 16 charter approval, saying nothing about the notice received for the material revision. Mot. at 12. New evidence/issues raised for the first time in a reply brief are not properly presented to a trial court and may be disregarded. Regency Outdoor Advertising v. Carolina Lances, Inc., (1995) 31 Cal.App.4th 1323, 1333. In any event, nothing in section 47605(a)(5) requires particular notice and the due process issue is inadequately briefed, if only because due process does not apply to quasi-legislative decisions and the material revision may be quasi-legislative. See Calvert v. County of Yuba, *supra*, 145 Cal.App.4th at 622.

Newhall also argues that AEA-SCV could have been located entirely within Acton-Agua's boundaries. AEA-SCV left a portion of the Acton Dulce Campus only to make room for another Academy charter, and Newhall contends that section 47605(a)(5) was "written expressly to prevent such use of the section 47605(a)(5) exception." Reply at 9.

Petitioner does not explain how it believes section 47605(a)(5) prevents an overflow. The plain language of the exception provides that a charter petitioner may establish one site out-of-district if the petitioner "has attempted to locate a single site or facility to house the entire program" which is unavailable in the district. Nothing in this language requires the entire facility to be located out-of-district. A petitioner may have part of the school site in-district and a portion out-of-district.<sup>27</sup>

Petitioner finally argues that its expert concludes AES-SCV could have been located in-district. Reply at 9. This is improper reply evidence and was not considered. Petitioner's argument also overlooks the fact that Acton-Agua only needed substantial evidence to support its decision; it does not matter that Petitioner also has substantial evidence to the contrary.

Assuming *arguendo* that no public hearing was required, there is substantial evidence that AEA-SCV satisfied the requirements of section 47605(a)(5) for the material revision, including that (1) AEA-SCV could not locate its facility within Acton-Agua's boundaries, (2) AEA-SCV gave statutory notice to the district where the charter school proposes to locate prior to approval of the material revision, and (3) AEA-SCV gave notice to the LACOE superintendent and Superintendent of Public Instruction prior to locating outside district boundaries.

#### **6. Post-Approval Conduct**

Academy opened another site outside Acton-Agua and within Newhall's boundaries to serve K-12 students at His Way Church, located at 23670 Wiley Canyon Road ("His Way

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<sup>27</sup>Petitioner's reliance on legislative history is improper reply evidence and is unnecessary because the statute is unambiguous.

Church"). His Way Church is an independent study, non-classroom, meeting space. Shapiro Decl., ¶32. No student in Academy's independent study programs is required to be on campus for more than 79% of the instructional minutes required by law. *Ibid.*

In June or July 2013, Academy leased the Rye Canyon site, which is in the Castaic USD. Evans Decl., Exs.15, 24. The Rye Canyon site is not "used for any purpose and is not a site of AEA-SCV. Shapiro Decl., ¶31.

From these facts, Newhall argues that Acton-Agua has not provided oversight of AEA-SCV, which has been given free reign to locate anywhere and everywhere it wishes. There is no record of the Acton-Agua Board approving a K-12 charter to operate His Way Church outside the district. In light of the Rye Canyon site leased to house Academy, the Pinecrest site housing AEA-SCV students, and the His Way Church site, all of which are outside the boundaries of Acton-Agua, Petitioner contends that the District and Academy have no regard for the law. Mot. at 13.

Academy responds that Pinecrest is the only school site that AEA-SCV operates outside its authorizer's boundaries. AEA-SVC is the charter school, not its corporate owner, Academy. Yet, Academy leases the Rye Canyon building, which is not a school site of AEA-SCV. The His Way Church site is not a school site governed by sections 47605(a)(5) and 47605.1(d), but is a non-classroom based "meeting space" that supports an independent study program. An entirely different framework of law governs the location of meeting spaces, allowing their location to an even further distance of the county adjacent to its authorizing district. §47605.1(c). Acad. Opp. at 11.

In reply, Newhall argues that the CSA restricts the location of independent study charter schools just as it does charter schools. Reply at 9. Nothing in section 47605 or 47605.1 exempts an independent study program from the geographic limitations. The His Way Church site is not in another county. Additionally, Academy is seeking approval to use Rye Canyon as an additional school site. Gibson Decl., ¶5.

The court agrees with Newhall. Section 47605.1, on which Academy relies, merely permits a resource center, meeting space, or other satellite facility in an adjacent county if used exclusively for educational support of students in non-classroom based independent study and the majority of students are residents of the county in which the school is authorized. Thus, it appears as if Academy is violating the geographical restrictions of section 47605.

## **7. The Remedy**

### **a. Remand for Public Hearing and Findings**

Petitioner concludes that Acton-Agua's approval of a charter petition without consideration of the legal requirements or a record fails as a matter of law to demonstrate that the district adequately considered all relevant factors and demonstrated a rational connection between those factors, its decision, and the purpose of the statutes. See *Ridgecrest, supra*, 130 Cal. App. 4th at 1006. As such, the approval must be set aside. Reply at 10.

The court agrees. The failure to demonstrate on the record of the May 16 public hearing through any findings, written or oral, that (1) AEA-SCV could not locate its facility within Acton-Agua's boundaries, and (2) AEA-SCV gave statutory notice to the district where the charter school proposes to locate prior to charter petition approval means that the approval must

be set aside. There is substantial evidence to support the approval, but Newhall also presents evidence to the contrary. Acton-Agua must conclude in the first instance that it has considered all relevant factors and demonstrated a rational connection between those factors, its decision, and the purpose of the CSA. See *Ridgecrest*, *supra*, 130 Cal. App. 4th at 1006. The matter must be remanded for a new public hearing on the approval.

The June 12, 2014 approval of the material revision does not affect this analysis. Acton-Agua was required to make findings with respect to the section 47605 issues before it approved the charter. It cannot approve discretionary revisions to a charter for which no findings were issued and which must be set aside. The remedy is to set aside both the May 16 approval and the June 12 approval, and remand to Acton-Agua for a new hearing and findings.

A new public hearing is required under section 47605 for another reason -- Acton-Agua's plan to generate revenue by locating charter schools out-of-district does not comply with the intent and purpose of the CSA. Petitioner Newhall argues that Acton-Agua's willingness to approve AEA-SCV's charter untethered to any physical location is disconnected from that purpose, which requires the oversight of charter schools under stringent geographical restrictions. *School Boards*, *supra*, 186 Cal. App. 4th at 1308. Acton-Agua's expressed intention that the CSA be used "to create an alternative source of funding so that [school districts] can ... get out from underneath the havoc that's being wreaking on [them] by the state" (Evans Decl., Ex.7, p.158) shows there is no rational connection between the Acton-Agua Board's failure to consider all statutory factors and its decision. Mot. at 13-14.

The court agrees. Revenue generation by authorizing out-of-district charter schools is not within the purpose and scope of the CSA. The 2002 amendments were intended to tighten oversight of charter schools by prohibiting the establishment of schools that would operate in locations geographically distant from their chartering agencies. A school district has a concomitant duty to ensure location of charter schools within the district unless the school meets the criteria of section 47605 for an out-of-district location. It is the charter school's needs, not the district's needs, which govern out-of-district placement. Acton-Agua misunderstood this purpose in creating a plan to recruit charter schools for out-of-district placement, and specifically in approving the charter for AEA-SCV on May 16.

Therefore, Acton-Agua must hold a new public hearing under section 47605 in which it considers the statutory factors of the CSA without the motivation of garnering revenue through shifting of the burden on other districts.

The court will not preclude Acton-Agua from approving AEA-SCV's charter or any other charter where a school intends to locate outside the district. Acton-Agua must apply the CSA properly, and not as a revenue generating device, but so long as it applies the proper statutory criteria pursuant to CSA's purposes it is not restricted otherwise from granting charters.

While the charter approval must be vacated, the court also will not enjoin AEA-SCV from continuing operation while the District conducts a new approval process. It would be too disruptive of students and teachers, and little benefit to Newhall, to do so. The court will impose a return date on the approval process, however, so that AEA-SCV does not continue to operate indefinitely without charter approval.

#### **b. Revocation of the Charter**

Newhall also requests that the court should revoke AEA-SCV's charter (second cause of action). Mot. at 15.

Revocation of the charter is mooted by the court's decision. In any event, "it is clear that section 47607(c) sets forth the exclusive grounds for revocation of an existing charter." United Teachers, supra, 54 Cal.4th at 524.<sup>28</sup> Newhall has not shown that any of the factors for revocation apply. A failure to comply with sections 47605(a)(5) and 47605.1(d) in submitting a petition for charter approval does not amount to a violation of law following a grant of the charter. Section 47607(c) does not apply retroactively to procedural defects existing in the petition itself, but instead to violations of law that occur during operation of the charter school. AEA-CVS's post-approval conduct is a discretionary matter and mandamus will not lie to control an exercise of discretion in a particular manner. Common Cause v. Board of Supervisors (1989) 49 Cal.3d 432, 442.

The second cause of action, to revoke AEA-SCV's charter, is denied.<sup>29</sup>

#### **E. Conclusion**

The Petition is granted with respect to vacating the charter approval and remanding for a public hearing and findings under section 47605. A return date will be set after discussion with counsel at hearing. In all other respects, the Petition is denied.

Petitioner Newhall's counsel is ordered to prepare a proposed judgment and writ, serve them on opposing counsel for approval as to form, wait 10 days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for November 13, 2014 at 9:30 a.m.

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<sup>28</sup>Section 47607(c) states: "(1) A charter may be revoked by the authority that granted the charter under this chapter if the authority finds, through a showing of substantial evidence, that the charter school did any of the following: (A) Committed a material violation of any of the conditions, standards, or procedures set forth in the charter. (B) Failed to meet or pursue any of the pupil outcomes identified in the charter. (C) Failed to meet generally accepted accounting principles, or engaged in fiscal mismanagement. (D) Violated any provision of law. (2) The authority that granted the charter shall consider increases in pupil academic achievement for all groups of pupils served by the charter school as the most important factor in determining whether to revoke a charter"

<sup>29</sup> The third cause of action for declaratory relief is subsumed within the first two causes of action. Newhall also asks for damages incidental to the writ flowing from the loss of student funding who otherwise would attend Newhall's schools. Mot. at 15. The court has not directed Acton-Agua to deny or revoke AEA-SCV's charter and there can be no damages incidental to the writ which only directs a new public hearing and findings. In addition, Newhall has not shown any loss of funding and any loss is speculative because it cannot show that AEA-SCV's students would have attended Newhall schools. See Acad. Opp. at 15. The claim for incidental damages is denied.



**PROOF OF SERVICE**

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

)  
) ss.  
)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 115 Pine Avenue, Suite 500, Long Beach, CA 90802.

On the date set forth below I served the foregoing document described as **NOTICE OF RULING ON PETITION FOR WRIT OF MANDATE** on interested parties in this action by delivering true copies to:

**SEE ATTACHED SERVICE LIST**

- ☒ **(VIA U.S. MAIL)** I caused such document to be placed in the U.S. Mail at Long Beach, California with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ **(VIA U.S. MAIL/REGISTERED/CERTIFIED)** I caused such document to be placed in the U.S. Mail at Long Beach, California with postage thereon fully prepaid to cover the cost of certified mailing, attaching a registration number for the certified mailing and a postcard complete with the addressee's name and address for a return receipt as requested. I am "readily familiar" with the practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ **(VIA FACSIMILE)** I caused such document to be transmitted via facsimile to the addressee from the facsimile machine of DANNIS WOLIVER KELLEY whose phone number is (562) 366-8505. The transmission by facsimile was reported as complete and without error.
- ☐ **(VIA OVERNIGHT MAIL)** I caused such envelope to be deposited at an authorized "drop off" box on that same day with delivery fees fully provided for at 115 Pine Avenue, Suite 500, Long Beach, CA 90802, in the ordinary course of business.
- ☒ **(VIA ELECTRONIC SERVICE)** [Code Civ. Proc. Sec. 1010.6; CRC 2.251] by electronic mailing a true and correct copy through DANNIS WOLIVER KELLEY'S electronic mail system from samaro@DWKesq.com to the email address(es) set forth above, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure section 1010.6 and CRC Rule 2.251. The transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 14, 2014 at Long Beach, California.

  
Sue Amaro



Service List

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