

*Los Angeles Superior Court  
111 North Hill Street, Dept. 82  
Los Angeles, Ca. 90012*



# Fax

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**Pages:** 9

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**Date:** JULY 25, 2014

**Re:** BS149626

**CC:**

**Urgent**     **For Review**     **Please Comment**     **Please Reply**     **Please Recycle**

● **Comments:**

Enclosed is the court's ruling on the order to show cause re preliminary injunction which was taken under submission on July 24, 2014.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 07/25/14

DEPT. 82

HONORABLE LUIS A. LAVIN

JUDGE

N DIGIAMBATTISTA

DEPUTY CLERK

M CLARK/COURTROOM ASST

ELECTRONIC RECORDING MONITOR

HONORABLE

JUDGE PRO TEM

1

NONE

Deputy Sheriff

NONE

Reporter

8:30 am

BS149626

Plaintiff

Counsel

MAGNOLIA EDUCATIONAL & RESEARCH  
FOUNDATION

Defendant

NO APPEARANCES

VS

Counsel

L A UNIFIED SCHOOL DISTRICT

**NATURE OF PROCEEDINGS:**

ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION  
RULING ON SUBMITTED MATTER

The court having taken the above matter under sub-  
mission on July 24, 2014, now makes its ruling as  
follows:

The order to show cause re preliminary injunction is  
granted for the reasons set forth in the document  
entitled ORDER GRANTING PETITIONER'S MOTION FOR A  
PRELIMINARY INJUNCTION, signed and filed this date.

A copy of this minute order as well as the Order are  
faxed to counsel of record as set forth below:

KATHLEEN M. EBERT, ESQ.: 916-646-1300  
SUSAN MILLER, ESQ.: 562-366-8505

SUPERIOR COURT OF THE STATE OF CALIFORNIA

**FILED**  
 Superior Court of California  
 County of Los Angeles

FOR THE COUNTY OF LOS ANGELES

JUL 25 2014

Magnolia Educational & Research Foundation, )  
 Petitioner, )  
 )  
 v. )  
 )  
 Los Angeles Unified School District, )  
 Respondent. )

Sherri R. Carter, Executive Officer/Clerk  
 By: Henry N. DiGiambattista Deputy  
 N. DiGiambattista

Case No. BS149626

**Order Granting Petitioner's  
 Motion for a Preliminary Injunction**

Petitioner Magnolia Educational & Research Foundation ("Petitioner") moves to enjoin Respondent Los Angeles Unified School District ("LAUSD") from taking any action to implement its non-renewal of the charters of Magnolia Science Academy 6 ("MSA 6") and Magnolia Science Academy 7 ("MSA 7"), (collectively the "Charter Schools"), and interrupt their funding or property. Petitioner also seeks a preliminary injunction directing LAUSD to recognize that the Charter Schools' petitions are deemed automatically renewed pending the outcome of the underlying action.

The matter was argued and submitted on July 24, 2014. The Court rules as follows:

**Requests for Judicial Notice**

The Court grants Petitioner's unopposed requests for judicial notice.

**Evidentiary Objections**

The parties have submitted numerous evidentiary objections. It is well-settled that evidentiary objections must be specific and accompanied by a reasonable, definite statement of the grounds. See Evidence Code § 353 (a) (objections must "make clear the specific ground of the objection"). Accordingly, if a party objected to several sentences or an entire paragraph in a declaration and one of the sentences is not objectionable, or if a party simply listed a litany of boilerplate objections, the Court overruled the objection. It is not the Court's duty to parse those sentences that are objectionable, or divine the specific basis for an objection, if the moving party has not done so. See People v. Porter, (1947) 82 Cal. App.2d 585, 588 ("An objection must usually be specific and point out the ground or grounds relied upon in a manner sufficient to advise the trial court and opposing counsel of the alleged defect so that the ruling may be made understandingly and the objection obviated if possible."). In addition, objections to evidence that was then cited by the objecting party in its papers are deemed waived and are overruled.

The Court overrules all of the parties' objections except as set forth below:

*Devora Navera Reed's July 3, 2014 Declaration*—sustained as to ¶ 5(12:26-13:3), ¶ 8(13:13-15);  
 and

*Devora Navera Reed's July 16, 2014 Declaration*—sustained as to ¶ 5 (2:16-25), Exhibit J, ¶ 8(13:15-16).

### **Statement of the Case**

Petitioner operates eleven California public charter schools, including MSA 6 and MSA 7, both of which have operated under LAUSD's authorization since 2009 and 2010, respectively. (Argin Decl., ¶¶ 2, 6, 11, 32). On November 6, 2013, Petitioner submitted charter renewal petitions for MSA 6 and MSA 7 to LAUSD. (Argin Decl., ¶ 15). On December 3, 2013, the authorized representative and Chief Executive Officer for the Charter Schools, Doctor Mehmet Argin, signed waivers allowing LAUSD to exceed the statutory time limits for acting on the charter renewal petitions established by Education Code section 47605(b). (Reed Decl., ¶ 2, Exhibits A and B; see also Argin Decl., ¶ 16, Exhibit A). Through Dr. Argin's execution of the waivers, the Charter Schools also agreed to waive application of the automatic charter renewal provision set forth in Section 11966.4(c) of Title 5 of the California Code of Regulations. (Reed Decl., ¶ 2, Exhibits A and B).

On March 4, 2014, LAUSD's Board of Education ("Board") conducted a public hearing concerning the Charter Schools' renewal petitions. (Reed Decl., ¶ 4). At the hearing, LAUSD's Board decided to approve the Charter Schools' petitions on the condition that a further review of the schools' fiscal processes and operations result in no negative material findings. (*Id.*, ¶ 3, Exhibits C and D; Argin Decl., ¶¶ 21, 23, Exhibits B and C). The Charter Schools' representatives did not object to the Board's conditional approval of the schools' petitions. (See Reed Decl., ¶ 4; see general July 16, 2014 Reed Decl., ¶ 4, Exhibit E).

On March 21, 2014, LAUSD's Office of the Inspector General ("OIG") sent Dr. Argin a letter informing Petitioner that the OIG, through the private firm Vicenti, Lloyd & Stutzman LLP ("VLS"), would be conducting a review of the Charter Schools' financial status and activities for the schools' periods of operation through February 28, 2014. (Argin Decl., ¶ 25, Exhibit D).

On June 27, 2014, LAUSD's Charter Schools Division sent Petitioner a letter informing it that MSA 6 and MSA 7 did not meet LAUSD's March 4, 2014 renewal conditions due to the schools' poor financial conditions. (Reed Decl., ¶ 6, Exhibit E; Argin Decl., ¶ 32, Exhibit E). The letter also informed Petitioner that the conditional renewal of the Charter Schools' petitions was "inoperative for the charter term beginning on July 1, 2014." (See Reed Decl., ¶ 6, Exhibit E). According to the June 27, 2014 letter, both schools met the IRS's definition of insolvency due to their liabilities substantially exceeding their assets. (See Reed Decl., ¶ 6, Exhibit E). The letter also cited the following reasons for LAUSD's decision not to renew the schools' charters: (1) the schools failed to disclose certain negative notes and comments about their financial status and activities generated during the schools' prior external financial audits; (2) the schools failed to properly document and issue loans made between each other and with Petitioner; (3) the schools failed to abide by the generally accepted accounting principles ("GAAP") as required by Education Code section 47607(c)(1); (4) the schools' principals exceeded their school-funded spending limits and the schools failed to properly monitor their principals' spending activities; and (5) the schools engaged in questionable and unexplained transactions, including spending several hundreds of thousands of dollars on immigration fees and immigration lawyers during

the past four years. (See *Id.*, ¶ 6, Exhibit E). Despite the schools' financial problems, the June 27, 2014 letter recognized that the schools' academic performances were satisfactory during the review period. (See *Id.*, ¶ 6, Exhibit E). Nevertheless, the letter concluded that the schools' financial deficiencies outweigh the schools' academic success and dictate that the schools' petitions should not be renewed. (See *Id.*, ¶ 6, Exhibit E). Although LAUSD sent Petitioner the June 27, 2014 letter, it has yet to provide Petitioner with a copy of OIG's final review report. (Argin Decl., ¶¶ 30-31). LAUSD's Board never reviewed or approved the June 27, 2014 findings.

On July 3, 2014, Petitioner filed a verified petition for writ of mandate and complaint for injunctive and declaratory relief. That same day, Petitioner filed an ex parte application for a temporary restraining order ("TRO") and order to show cause regarding preliminary injunction ("OSC re PI"). After considering Petitioner's application and LAUSD's opposition, the Court denied Petitioner's request for a TRO but set a hearing on an OSC re PI for July 24, 2014.

In its OSC re PI, Petitioner alleges that the Charter Schools will suffer irreparable harm if immediate injunctive relief is not issued. Indeed, the Charter Schools are scheduled to commence the 2014/2015 school year on August 12, 2014. (Argin Decl., ¶¶ 44, 53). Further, the Charter Schools enrolled students for the 2014/2015 school year in March 2014 and confirmed the students' enrollment with the students' parents in April 2014.

### **Analysis**

The purpose of a preliminary injunction is to preserve the status quo pending a decision on the merits. *Major v. Miraverde Homeowners Ass'n.*, (1992) 7 Cal. App. 4th 618, 623. In determining whether to issue a preliminary injunction, the trial court is to consider the likelihood that the plaintiff will prevail on the merits at trial and to weigh the interim harm to the plaintiff if the injunction is denied against the harm to the defendant if the injunction is granted. *King v. Meese.* (1987) 43 Cal. 3d 1217, 1226. "In seeking a preliminary injunction, [the party seeking the injunction] bore the burden of demonstrating both likely success on the merits and the occurrence of irreparable harm." *Savage v. Trammell Crow Co.*, (1990) 223 Cal.App.3d 1562, 1571; *Citizens for Better Streets v. Board of Sup'rs of City and County*, (2004) 117 Cal.App.4th 1, 6.

Petitioner contends that a preliminary injunction should issue because LAUSD improperly denied the Charter Schools' renewal petitions. Specifically, Petitioner argues that LAUSD's June 27, 2014 findings fail to comply with Title 5 of the California Code of Regulations ("5 CCR") Section 11966.5 because they were never reviewed or approved by LAUSD's Board. In turn, LAUSD argues that the June 27, 2014 findings are valid because the Board properly delegated its power to issue written findings to LAUSD's staff. LAUSD also argues that Petitioner prematurely seeks judicial review of LAUSD's denial of the schools' petitions because the Charter Schools have failed to exhaust their administrative remedies by appealing the June 27, 2014 findings to the Los Angeles County Office of Education ("LACOE").

As discussed below, the Court finds that Petitioner is likely to succeed on the merits because LAUSD's Board failed to issue proper written findings. That is, the June 27, 2014 written

findings by the District's staff are ineffective and the Charter Schools are not required to, and cannot, avail themselves of the administrative appeal procedures provided under 5 CCR Section 11966.5. The Court also finds that Petitioner will suffer irreparable harm unless an injunction is issued. Accordingly, LAUSD is enjoined from enforcing its June 27, 2014 decision.

*a. LAUSD's June 27, 2014 Decision Has No Legal Effect*

On March 4, 2014, LAUSD's Board issued a conditional approval of the Charter Schools' renewal petitions pending further investigation of the schools' financial activities and conditions. The conditional approval provided for two possible outcomes following LAUSD's investigation. (See e.g., July 16, 2014 Reed Decl., ¶ 3, Exhibit C [p. 5]). If LAUSD's investigation revealed no material findings concerning the schools' financial activities and conditions, the schools' charter petitions would be approved and deemed renewed as of July 1, 2014. (*Id.*, ¶ 3, Exhibit C [p.5]). On the other hand, if the investigation revealed material findings, the schools' charter petitions would be denied and deemed expired as of June 30, 2014. (*Id.*, ¶ 3, Exhibit C [p.5]). Although not expressly required by the terms of the conditional approval, some members of the Board requested that, in the event material findings were made during LAUSD's staff's investigation of the Charter Schools, the staff bring its findings before the Board. (See *Id.*, ¶ 4, Exhibit E [pp. 53:8-17, 58:16-24]).

On June 27, 2014, LAUSD's Charter Schools Division issued a letter containing material findings concerning the Charter Schools' financial conditions and activities. (Argin Decl., ¶ 32, Exhibit E). The letter found that the Charter Schools were insolvent and had mismanaged their finances during the period subject to the investigation. (*Id.*, ¶ 32, Exhibit E). Based on these findings, LAUSD's Charter Schools Division stated that LAUSD's conditional approval of the schools' charters was rescinded effective July 1, 2014. (*Id.*, ¶ 32, Exhibit E). The June 27, 2014 letter does not indicate that the Charter Schools Division's findings were reviewed or approved by LAUSD's Board, and LAUSD presents no evidence demonstrating that LAUSD's Board took such action with respect to the findings.

5 CCR Section 11966.5(a) provides: "When the governing board of a school district denies a charter school's petition for renewal, the charter school may submit a petition for renewal to the county board of education not later than 30 calendar days *after the district governing board makes its written factual findings.*" (Emphasis added). Here, Petitioner contends that LAUSD's June 27, 2014 written findings carry no legal effect under 5 CCR Section 11966.5 because those findings were issued by LAUSD staff—i.e., the Charter Schools Division—and were never approved by LAUSD's Board. In its opposition, LAUSD argues that the June 27, 2014 findings triggered the Charter Schools' 30-day appeal window under Section 11966.5 because LAUSD's Board properly delegated the task of investigating the schools' financial conditions and issuing written findings about those conditions to LAUSD staff. The Court agrees with Petitioner's position.

It is well established that "powers conferred upon public agencies and officers which involve the exercise of judgment or discretion are in the nature of public trusts and cannot be surrendered or delegated to subordinates in the absence of statutory authorization." California Sch. Employees Assn. v. Personnel Commission (1970) 3 Cal.3d 139, 144. However, an agency may delegate

certain of its powers so long as “there has been no ‘total abdication’ of [the agency’s] authority.” Taylor v. Crane, (1979) 24 Cal.3d 442, 452. Generally, an agency “may delegate the performance of ministerial tasks, including the investigation and determination of facts preliminary to agency action.” California Sch. Employees Assn., *supra*, 3 Cal.3d at p. 144. Further, an agency may adopt the delegated act of a subordinate as its own by later approving or ratifying the subordinate’s act. *Ibid*. Here, the Court finds that, as a matter of law, the LAUSD Board was not authorized to delegate the power to rescind the March 4, 2014 conditional approvals to the Charter Schools Division. At a minimum, the LAUSD Board should have approved or ratified the Charter Schools Division’s June 27, 2014 findings and decision in a duly noticed meeting with input from the public. Its failure to do so constitutes a total abdication of the Board’s authority and renders the June 27, 2014 findings and decision null and void.

Further, the weight of the evidence does not show that the LAUSD Board explicitly delegated the power to rescind the March 4, 2014 conditional approval to the Charter Schools Division. Certainly, the transcript from the March 4, 2014 meeting indicates that the Board intended for LAUSD staff to conduct an investigation of the Charter Schools’ financial conditions and activities and draft findings concerning that investigation. (July 16, 2014 Reed Decl., ¶ 4, Exhibit E [p. 48]). However, there is nothing in that transcript, or in any communication issued by the LAUSD Board, that demonstrates that LAUSD staff was authorized to make a final decision concerning the conditional approval of the schools’ renewal petitions. In fact, the March 4, 2014 meeting transcript contains several comments from Board members and LAUSD staff concerning what action would be taken following the staff’s investigation of the Charter Schools. Many of these comments indicate that the Board intended for LAUSD staff to report back to the Board in the event material findings were made. (See e.g., *Id.*, ¶ 4, Exhibit E [p. 48 (“ . . . and then then staff will report back to the Board with the findings.”); p. 53 (“And the Inspector General looks into matters, and if anything should happen, it should come back for revocation. Period.”); p. 58 (“ . . . well, we’re just going to assume that any findings would come to you and to the Board.”)]). Also, the language of the March 4, 2014 conditional approval indicates that the Board intended to review the staff’s investigation and findings prior to finally approving or denying the schools’ petitions. For example, the conditional approval states that “[s]taff will provide the Board of Education an update as soon as possible and prior to June 30, 2014, as to the status of the school’s meeting the condition of this action.” (Reed Decl., ¶ 3, Exhibit C [p. 5]).

LAUSD’s contention that Petitioner has failed to exhaust its administrative remedies is without merit. Since the LAUSD Board never issued written findings supporting its denial of the petitions, the Charter Schools do not have access to a statutorily authorized administrative remedy. See 5 CCR, § 11966.5(a) (administrative appeal available only after the local governing board issues written findings). Therefore, the requirement of exhaustion of administrative remedies does not bar Petitioner’s lawsuit or its request for injunctive relief. In any event, the requirement of exhaustion of administrative remedies does not apply if the remedy is inadequate (Glendale City Employees’ Assn., Inc. v. City of Glendale, (1975) 15 Cal.3d 328, 342), or when irreparable harm would result by requiring exhaustion of administrative remedies before seeking judicial relief. Department of Personnel Administration v. Superior Court, (1992) 5 Cal.App.4th 155, 169. Both exceptions apply here.

In sum, because the Board could not or did not delegate the power to rescind the March 4, 2014 conditional approval to the Charter Schools Division, and because there is no evidence that the Board approved or ratified the Charter Schools Division's June 27, 2014 findings and decision, the Court finds that LAUSD failed to properly rescind its March 4, 2014 conditional approval of the Charter Schools' petition. Likewise, because the June 27, 2014 findings do not constitute findings of the LAUSD Board, the 30-day appeal provision set forth in 5 CCR Section 11966.5 was never triggered.

*b. Petitioner Will Suffer Irreparable Harm*

The Court finds that Petitioner has made a significant showing of irreparable harm as a result of LAUSD taking the position that the Charter Schools' charters expired. As noted above, the Charter Schools are set to begin operations for the 2014/2015 school year on August 1, 2014, with students expected to report to school on August 12, 2014. (Argin Decl., ¶¶ 44-46). As such, by the time of the hearing on the instant motion, Petitioner will have approximately one week to notify the schools' staffs, and approximately three weeks to notify the schools' students, that the schools will not operate for the 2014/2015 school year. Thus, even if LAUSD's Board were to issue proper written findings in the very near future, the schools would be unable to obtain administrative review of those findings to properly inform their students and staff of the schools' status before the start of the 2014/2015 school year.

*c. The balance of harms weighs in Petitioner's favor*

The Court acknowledges that LAUSD has presented evidence establishing financial mismanagement by the Charter Schools. However, the balance of harm weighs in the Charter Schools' favor in allowing them to continue operations subject to the following conditions pending resolution of the underlying action:

1. Petitioner shall provide LAUSD with a copy of the 2013-2014 audit report for the Charter Schools by July 28, 2014;
2. Every 30 days thereafter, Petitioner shall provide LAUSD with updates of the Charter Schools' profit and loss statements, balance sheets, cash flow and bank statements, check registers, and expense reports;
3. The Charter Schools shall not engage in deficit spending after maintaining reserves of 5%;
4. The Charter Schools shall not make any further expenditures to Accord, or for immigration-related expenses;
5. The Charter Schools shall provide LAUSD with copies of its vendor agreements; and
6. The Charter Schools shall, in timely fashion, cooperate with any inquiry by LAUSD concerning the Charter Schools' finances.

See *Hummell v. Republic Fed. Savings & Loan Assn.*, (1982) 133 Cal. App. 3d 49, 51-52 ("a court may exercise injunctive power upon conditions protecting all interests affected by the injunction").



**Disposition**

Petitioner's request for a preliminary injunction is granted insofar as LAUSD is enjoined from taking any action to implement its non-renewal of the charters of Magnolia Science Academy 6 and Magnolia Science Academy 7, subject to the above-stated conditions. Until further order of the Court, the Charter Schools may continue to operate as if their charters had been renewed by LAUSD.

The clerk shall provide notice by fax to counsel of record.

IT IS SO ORDERED.

July 25, 2014



\_\_\_\_\_  
Hon. Luis A. Lavin  
Judge of the Superior Court