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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF MARIN

13 WILLOW CREEK ACADEMY, a nonprofit  
14 corporation,

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Petitioner/Plaintiff,

v.

SAUSALITO MARIN CITY SCHOOL  
DISTRICT; MARY JANE BURKE, in her  
capacity as Marin County Superintendent of  
Schools; and DOES 1 through 10, inclusive,

Respondents/Defendants.

CIV  
CASE NO.: **1900855**  
**WILLOW CREEK ACADEMY'S  
VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

**BY FAX**

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1 I. INTRODUCTION

2 This lawsuit seeks to ensure equitable funding and facilities to *all* public school students in the  
3 Sausalito Marin City School District (the “District”) regardless of whether their families choose to  
4 attend the public charter school, Willow Creek Academy (“Plaintiff” or “WCA”), or the traditional  
5 public school, Bayside Martin Luther King, Jr., Academy (“Bayside MLK”). WCA seeks  
6 implementation of the law and policy of the State of California, which requires that public charter  
7 schools receive “full and fair funding” that is “equal to the total funding that would be available to a  
8 similar school district serving a similar pupil population.”

9 WCA offers a high-caliber public charter school option that is racially and socio-economically  
10 diverse and inclusive. WCA’s 400+ students represent approximately 80% of the public school  
11 enrollment in the District. WCA was founded in 2001 on the belief that inquiry driven, project-  
12 oriented learning would provide District families with an opportunity to excel and engage in education  
13 in ways that were previously unavailable in the community.

14 The diversity and inclusion found at WCA are unique compared to many California schools and  
15 compared to all other public schools in Marin County. WCA has no majority of any racial or socio-  
16 economic subgroup, and more than 20 languages other than English are spoken in its students’ homes.  
17 About half of WCA’s students are classified as “high-need” under California law – low income or  
18 English learner students. WCA provides an opportunity for students of a variety of backgrounds and  
19 beliefs to work together and support one another, and is proud of its students’ accomplishments.

20 Unfortunately, in its endeavor to better the educational opportunities for children in its  
21 community and to foster racial desegregation in a previously segregated District, WCA has been met  
22 with nothing but frustration and suppression by its local school district and authorizer, Sausalito Marin  
23 City School District, and by the Marin County Superintendent of Schools Mary Jane Burke  
24 (“Superintendent Burke”) (collectively, “Respondents” or “Defendants”). Under threat of a financial  
25 takeover by Superintendent Burke, the District has now adopted a budget plan that will cut  
26 approximately 25% of WCA’s annual funding beginning July 1, 2019, resulting in per-student funding  
27 at WCA of less than \$10,000 per student while allocating more than \$40,000 per student to Bayside  
28 MLK. In addition, the District has refused to allocate reasonably equivalent facilities to WCA,

1 allowing its decades-old campus to deteriorate to the point of threatening children’s safety while  
2 providing Bayside MLK with a state-of-the-art facility of far superior physical condition and  
3 proportions.

4 Respondents’ conduct is a breach of the public trust and public policy, violating their legal duty  
5 to allocate public educational resources, including funding and facilities, so that all public school  
6 students in the District, regardless of which public school their families choose, have access to a high  
7 quality education. Respondents have an unequivocal obligation to house and fund all public school  
8 children (charter and non-charter) equitably.

9 Respondents have failed to meet this obligation by explicitly refusing to give the same degree of  
10 consideration to the needs of charter school students as students in their sole District-run school,  
11 Bayside MLK. Since WCA’s inception in 2001, there has been a large disparity in funding favoring  
12 Bayside MLK over WCA, with Bayside MLK typically receiving between two and four times the per  
13 student funding allocated to WCA.

14 Currently, as a “basic-aid” or “community funded” district<sup>1</sup>, the District enjoys approximately  
15 \$3.4 million in annual revenue in excess of the state-mandated minimum. The District Board recently  
16 voted, by a bare three-person majority, to reaffirm its earlier decision to adopt a 2019-2020 budget that  
17 shares none of this excess funding with the approximately 400 students at WCA, instead allocating all  
18 of it to the approximately 100 students enrolled at Bayside MLK. In addition, the District proposes to  
19 charge WCA for any services or facilities provided at rates that equal or exceed the legal maximum.  
20 As noted, this results in per-student funding at the traditional school that is more than quadruple the  
21 funding level at the public charter school. In adopting this approach, the District followed the  
22 direction of Superintendent Burke, who advised the District of her view that charter schools are the  
23 equivalent of private schools or third-party vendors for purposes of discretionary resource allocation,  
24 and that she would exercise her statutory authority to assume financial control of the District unless it

25 <sup>1</sup> As explained in greater depth in Section IV.E. below, the District is among the roughly 10% of  
26 California school districts that are “basic-aid” or “community-funded”, meaning that the District’s  
27 public funding comes from its share of local property tax revenues rather than the minimum per-  
28 student amount allocated from the state to the other 90% of school districts. As a result, the District’s  
public funding has always greatly exceeded what it would receive if it were a “revenue limit” or “state-  
funded” district. Thus, the District is projected to receive more than \$3.4 million dollars next fiscal  
year in excess of that which 90% of the school districts in the State receive.

1 took budget action eliminating any sharing of excess revenue with WCA and maximizing fees to be  
2 paid by WCA.

3 This profound funding inequity, and Superintendent Burke’s stated views on resource  
4 allocation, violate the 1992 Charter Schools Act, which requires that charter schools receive “full and  
5 fair funding” – that is, funding “equal” to the “total funding” that a similar school in a similar district  
6 would receive. (Educ. Code §§ 47615, 47630.) In defiance of this statutory prohibition of funding  
7 discrimination based on whether a public school is a charter or traditional school, and its duty to act in  
8 the best interests of all public school students, the District has explicitly premised the defunding of a  
9 majority of its high-need students on the proposition, advanced by Superintendent Burke, that it must  
10 place the interests of students attending the traditional school (Bayside MLK) over the interests of  
11 those attending the charter school (WCA). In addition to violating the California Education Code and  
12 other provisions of law, it also deprives WCA students of equal protection under the law by denying  
13 students their fundamental right to an education pursuant to the California Constitution.

14 Respondents have relegated the needs of WCA students to second-class status, beneath those of  
15 the students at Bayside MLK, purely based on the form of WCA’s governance. This is a clear  
16 violation of the law, and of their duty to act in the best interest of all students. Unless the Court acts to  
17 correct this course of conduct, the vast majority of the District’s public school children, including a  
18 majority of its disadvantaged students, will be deprived of their entitlement to a quality public  
19 education.

## 20 II. PARTIES

21 1. Plaintiff/Petitioner Willow Creek Academy is a kindergarten through 8th grade (“K-8”)  
22 public charter school operated as a nonprofit public benefit corporation of the same name pursuant to  
23 Education Code section 47604, with its principal place of business in Sausalito, Marin County,  
24 California.

25 2. Defendant/Respondent Sausalito Marin City School District is a K-8 public school  
26 district whose principal place of business is 200 Phillips Dr., Marin City, California 94965.  
27 Respondent is a public entity, duly created under the laws of the state of California, for the purpose of  
28 providing educational services to the public within its boundaries in the County of Marin.



1 performance, and providing vigorous competition from within the public school system to stimulate  
2 continued improvement in all public schools. (Educ. Code §§ 47601, 47615.)

3 8. Charter schools are part of the public school system, and provide free, non-sectarian,  
4 education to California students. Charter schools, as defined by statute, are not only financed by state  
5 and local tax dollars, they are expressly entitled to the same share of educational funding as traditional  
6 public schools. (Educ. Code § 47612(a); *see also Today's Fresh Start, Inc. v. Los Angeles County*  
7 *Office Of Education* (2013) 57 Cal.4th 197, 206 (“Though independently operated, charter schools  
8 fiscally are part of the public school system; they are eligible equally with other public schools for a  
9 share of state and local education funding”).

10 9. Students and parents who choose charter schools are not to be relegated to second-class  
11 status in a dual system, but instead are to be welcomed as full and equal participants in California's  
12 commitment to public school education. (*Wilson v. State Bd. of Education* (1999) 75 Cal.App.4th  
13 1125, 1137 (“[T]he establishment of charter schools does not create a dual system of public schools,  
14 as, for example, would be the case if there were a competing local system...the Act places charter  
15 schools within the common system of public schools.”) Charter schools are schools within the public  
16 school system, and are entitled to full and fair funding under the Education Code. (Educ. Code §  
17 47615 (“[c]harter schools shall be entitled to full and fair funding”); Educ. Code § 47630 (“each  
18 charter school be provided with operational funding that is equal to the total funding that would be  
19 available to a similar school district serving a similar pupil population ”); *see also Wilson, supra*, 75  
20 Cal.App.4th at 1138 (“[T]he [Charter Schools] Act assures that charter schools will receive funding  
21 comparable to other public schools.”).)

22 10. By explicitly placing the interests of one set of public school students over the interests  
23 of others based on the latter’s attendance at a public charter school, and by funding traditional school  
24 students at more than four times the level of public charter school students through the discretionary  
25 allocation of the entirety of the District's excess revenue, Respondents are violating WCA’s legal right  
26 to full and fair funding equal to what a similar public school in a similar district would receive.

27 11. Charter schools are additionally entitled to reasonably equivalent facilities. In 2000,  
28 voters passed Proposition 39 (“Prop. 39”), which requires that school districts “make available, to each



1 charter school operating in the school district, facilities sufficient for the charter school to  
2 accommodate all of the charter school’s in-district students in conditions reasonably equivalent to  
3 those in which the students would be accommodated if they were attending other public schools of the  
4 district.” (Educ. Code § 47614 subd. (b).) The intent of Prop. 39 is to ensure that “public school  
5 facilities [] be shared fairly among all public school pupils, including those in charter schools.” (Educ.  
6 Code § 47614 subd. (a).) WCA is presently housed in a district facility allocated under Prop. 39, but  
7 that facility is not reasonably equivalent to the only other facility in the District, the Bayside MLK  
8 campus.

9 **B. Charter Schools Are Entitled to Equal Protection Under the Constitution.**

10 12. The equal protection clause of the California Constitution provides that a person may not  
11 be “denied equal protection of the laws[.]” (Cal. Const., art. I, §7(a).) The constitutional guaranty of  
12 equal protection requires that those similarly situated receive similar treatment. (*People v. Buffington*  
13 (1999) 74 Cal.App.4th 1149, 1155.) If a distinction is drawn with respect to a suspect classification or  
14 infringes on a fundamental interest, it is strictly scrutinized and is upheld only if it is necessary to  
15 further a compelling state interest. (*Weber v. City Council* (1973) 9 Cal.3d 950, 958-959.)

16 13. The California Supreme Court has held that under state equal protection, education is a  
17 fundamental right and therefore subject to strict scrutiny. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 597  
18 (*Serrano I*); *Serrano v. Priest* (1976) 18 Cal.3d 728, 767-768 (*Serrano II*) [education is a fundamental  
19 right that lies “at the core of our free and representative form of government.”].) Disparate treatment  
20 that inflicts a real and appreciable impact on the fundamental right to education, and which is not  
21 narrowly tailored to serve a compelling state interest, is unconstitutional. (*Butt v. California* (1992) 4  
22 Cal.4th 668, 685-686.)

23 14. In *Serrano II*, the California Supreme Court found that the state’s school funding system  
24 deprived certain California students of the fundamental right to education. (*Serrano II, supra*, 18 Cal.  
25 3d at 769.) Children attending traditional public schools and charter public schools are entitled to the  
26 benefits of educational funding so as to provide them with a free public education in accordance with  
27 California constitutional mandates. (Cal. Const., art. IX, §7.) Both traditional public schools and

28 ///

1 charter schools are part of California’s public school system, and students who attend either are public  
2 school students.

3 15. Respondents have denied WCA students of that guarantee to equal treatment.

4 **C. History of Willow Creek Academy.**

5 16. Since its inception, WCA has worked diligently to further the aims of the CSA: to create  
6 innovative educational options and to drive student achievement among diverse demographic groups.  
7 WCA began its operations during the 2001-2002 school year and was re-approved for operation for  
8 five-year periods on three subsequent occasions by the District. Over the course of its eighteen-year  
9 existence, WCA has served approximately 3,500 students, the majority of whom are students of color  
10 or socio-economically disadvantaged, and very often both. Diversity, inclusion, and support for high-  
11 need students have been core values at the school from the start, and WCA believes it is succeeding in  
12 implementing those values.

13 17. The District has faced social and academic challenges for decades, despite per-student  
14 public funding that is at or near the highest levels in the California public school system. In 1997, the  
15 Marin County Grand Jury issued a scathing report about the District, citing “dismal test scores, lack of  
16 leadership and violent student behavior.” The report noted that the District “enjoyed three times  
17 Marin’s average financial resources per student, so scarcity of funds was no excuse.”  
18 Contemporaneous articles in the San Francisco Chronicle and the Los Angeles Times also described a  
19 failing 250-student district. The Los Angeles Times story noted that the closure of nearby military  
20 bases around 1990 had caused a loss of roughly 100 students. By 1997, the public schools had largely  
21 re-segregated with only a small fraction of enrollment comprised of white students.

22 18. Against this backdrop, in 1999, community members initiated efforts to establish a  
23 charter school with the aim of re-establishing quality public education in the District. The District  
24 granted Willow Creek Academy a charter, and the school opened its doors with roughly 40 students in  
25 2001 -- the vast majority of them students of color from Marin City.

26 19. Consistent with its core values of diversity and inclusion, WCA sought from the  
27 beginning to ensure that students of color and a range of socio-economic and cultural backgrounds  
28 were well represented in its student body. WCA has worked to create a student body that crossed

1 socio-economic, cultural, and Marin City/Sausalito lines, something the District had historically not  
2 been able to achieve and maintain.

3 20. WCA has succeeded in that effort: WCA now educates roughly 80% of all public school  
4 students in the District, with about equal proportions of students residing in Marin City and Sausalito.<sup>2</sup>  
5 Every year of its existence, and to this day, a majority of students at WCA are children of color. But  
6 WCA's diversity is not limited to race and ethnicity: roughly 40% are eligible for free or reduced price  
7 lunch, and more than 20 different languages are spoken in the homes of the approximately 400  
8 students now enrolled in the school. About half – or roughly 200 – are high-need within California's  
9 definition for purposes of allocation of public funding.

10 21. The proportion of white students enrolled at WCA has also grown from almost nothing  
11 in the first six or seven years of the school's existence to roughly 40% today. This is a function of  
12 overall growth of the school and restored confidence in local public education among this and other  
13 demographic groups. Many families who, in years past, would have moved or sent their children to  
14 private schools have elected to stay in the District and send their children to WCA. This change is by  
15 no means limited to affluent white families; growth has occurred across the demographic spectrum.  
16 The increased participation in public education within the District is due in large part to the hard work  
17 of WCA's teachers, staff, and families.

18 22. The growing proportion of white students and students of color has brought the school's  
19 demographics more in line with the demographics of the District generally. Sausalito, which is 90%  
20 white, represents approximately 70% of the District's population. In addition, the demographics of  
21 Marin City have changed substantially over the past 20-30 years. African-Americans are no longer a  
22 majority in Marin City – as of the 2010 census, they were 38% of the population, almost exactly the  
23 same percentage as white Marin City residents (39%). At the same time, Asian, Hispanic/Latino, and  
24 mixed-race populations have grown in Marin City, increasing overall diversity.

25 23. The growth at WCA has been largely accretive to the District as a whole. That is, it has  
26 not been mainly at the expense of enrollment at Bayside MLK, the traditional public school, but has  
27

28 <sup>2</sup> All enrollment data is taken from the California Department of Education's School Dashboard Report.

1 caused the number of overall students attending public schools in the District to increase. The overall  
2 student population within the District, at the two schools combined, has roughly doubled since the  
3 years before WCA founding, almost entirely due to growth at WCA.

4 24. For the first seven years of its existence (school years 2001/2002 to 2007/2008), WCA's  
5 annual enrollment of African-American students was numerically higher than enrollment of students  
6 identifying as white. In all years of operation, WCA has served significantly more students of color  
7 than white students, and WCA has continuously undertaken efforts to ensure that the ethnic makeup of  
8 its student population is reflective of the people in its community.

9 **D. WCA Serves a Large Majority of the Students Who Reside in the District, Including a**  
10 **Majority of Students of Color, Low Income Students and English Learners.**

11 25. For the 2017-2018 school year, the total number of public school students in the District  
12 was 538, with 411 of them attending WCA. Bayside MLK's total enrollment has since dropped to  
13 approximately 108 students. Accordingly, WCA's student body now represents more than 80% of the  
14 public school enrollment in the District.

15 26. WCA also enrolls more students of color than all of the students attending Bayside  
16 MLK. In 2017-2018, WCA served 240 students of color, more than double the total enrollment at  
17 Bayside MLK. Further, the percentage of WCA's students who are African-American (10%, as of  
18 2017-2018) is very close to the percentage of the District's general population who are African-  
19 American (11% as of 2010). Moreover, WCA serves the vast majority of Hispanic/Latino students in  
20 the District.

21 27. Over the years, WCA has crafted strategies to attract in-district students of color to the  
22 school. While the law prohibits race- or ethnicity-based enrollment restrictions or preferences, WCA  
23 has regularly undertaken outreach to recruit kindergarteners from the Manzanita Child Development  
24 Center, the Marin Learning Center, and Marin Head Start, all programs that serve preschool students  
25 in Marin City. In addition, WCA has developed programming and concentrated resources aimed at  
26 closing the achievement and opportunity gaps among high-need students, a majority of the WCA's  
27 student population.

28 ///

1           28.     WCA enrolls more Marin City residents and more low-income students in its programs  
2 than Bayside MLK’s entire enrollment. In fact, it serves approximately twice as many such students  
3 as Bayside MLK.

4 **E. From its Founding, WCA Has Received Significantly Less Funding than Bayside MLK.**

5           29.     The District is among the roughly 10% of California school districts that are “basic-aid”  
6 or “community-funded”, meaning that its public funding comes from its share of local property tax  
7 revenues rather than the minimum per-student amount allocated from the state to the other 90% of  
8 school districts. As a result, the District’s public funding has always greatly exceeded what it would  
9 receive if it were a “revenue limit” or “state-funded” district.

10           30.     State-funded districts receive the legal minimum public funding. That minimum is now  
11 determined by what is known as the “Local Control Funding Formula” or “LCFF.” The LCFF  
12 establishes a minimum funding figure per student, and then adds funding for each student who is  
13 deemed high-need. Students who are English learners and/or who are eligible for free or reduced-price  
14 lunch are classified as high-need. In addition to a per-student increase for each high-need child,  
15 schools or districts may receive a “concentration grant” if their high-need group exceeds a certain  
16 percentage of the total enrollment.

17           31.     The excess funding the District has enjoyed by virtue of being a basic aid district has  
18 been millions of dollars annually. In 2018-2019, for example, the District calculated that, in an overall  
19 public revenue budget of approximately \$9 million, the excess was approximately \$3.4 million. That  
20 is, if one were to total the District’s LCFF entitlement and subtract it from the District's overall public  
21 revenue, the remaining amount would exceed \$3 million.

22           32.     Historically, this meant that the District had a large amount of discretionary revenue.  
23 After the District allocated the legal minimum per student, covered District overhead (e.g., salaries of  
24 the superintendent, chief business officer, etc.), and paid the net cost of special education and facilities,  
25 there was still a great deal of money left over – for years, hundreds of thousands or even millions of  
26 dollars. This left the District Board with discretion over how to allocate this excess funding.

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1 33. Prior to the founding of WCA in 2001, all of this excess revenue was allocated to  
2 students in the traditional public school system. As noted, this abundant revenue did not translate into  
3 student success or a diverse student population.

4 34. After WCA was founded, however, annual budget debates over the discretionary  
5 revenue became the norm. Advocates for the traditional public school argued that all the basic aid  
6 excess should go to Bayside MLK, while WCA leadership argued for more proportionate distribution  
7 based on need without regard to which public school the students attend.

8 35. In the eighteen years WCA has existed, this debate was generally resolved in favor of  
9 Bayside MLK; the District Board allocated the vast majority of the excess to Bayside MLK and  
10 allocated a modest amount, if any, to WCA. This “supplemental funding” to WCA varied from year to  
11 year both in absolute terms and as a percentage of WCA’s budget, ranging from roughly \$30,000 in  
12 the first year, down to zero for several years, and up to a high of \$450,000 in the 2013-2014 school  
13 year.

14 36. Even with that “supplemental funding”, and even after subtracting all centralized costs  
15 and special education, the funding per student has always been substantially higher at Bayside MLK  
16 than at WCA. When the centralized and special education costs are allocated by school, the disparity  
17 in favor of Bayside MLK is even greater.

18 37. When, in 2008, a Marin County Grand Jury reviewed the funding disparity that favored  
19 Bayside MLK, it strongly recommended greater equity in funding -- that is, a greater share should be  
20 allocated to WCA. First, the Grand Jury observed that “[a]ll three schools -- Bayside, MLK and  
21 Willow Creek -- are the responsibility of the District Board.”<sup>3</sup> (Marin County 2008 Grand Jury Report  
22 at 8.). The report noted the large disparity in funding between Willow Creek and Bayside MLK --  
23 with the former at \$9,000 per student (which included the legal minimum funding from the District)  
24 and the latter computed at roughly \$31,000 per student. Finally, the Grand Jury concluded “that the  
25 District should assist its Willow Creek charter school to become more attractive to Marin City and

26 <sup>3</sup> Bayside Elementary and Martin Luther King, Jr. Middle School were formerly located on separate  
27 campuses; the former in Sausalito and the latter in Marin City. In 2013, the District merged the two  
28 schools. After the construction of three new state-of-the-art classrooms on the MLK campus that was  
new in 2009, Bayside students moved to the MLK campus WCA is now housed on the former Bayside  
campus. This single District school is referred to as “Bayside MLK” throughout.

1 Sausalito families by providing it significantly greater financial support and public acknowledgement.”  
2 Despite this recommendation, the District Board has continued to allocate funding sharply in favor of  
3 Bayside MLK.

4 **F. The 2014-2019 MOU Between the District and WCA Did Not Materially Change the**  
5 **Funding Disparity Favoring Bayside MLK.**

6 38. One narrative promoted by Superintendent Burke in recent years holds that the 2014-  
7 2019 Memorandum of Understanding<sup>4</sup> (“MOU”) between the District and WCA represents a dramatic  
8 “diversion” of public funds from Bayside MLK to WCA – and that this is the reason for the traditional  
9 school’s challenges. According to this narrative, this happened because a majority of the District  
10 Board favored WCA.

11 39. This narrative is false. As noted, the challenges in the District pre-dated WCA’s  
12 existence -- when all of the ample public funding flowed exclusively to the traditional public schools.  
13 Then, as now, large amounts of money were not adequate by themselves to bring about a positive  
14 educational environment, student outcomes, or student diversity.

15 40. Nor is it true that the current MOU represents an economic shift in favor of WCA. To  
16 the contrary, when net public resource allocation to WCA is compared under the existing 5-year MOU  
17 to the allocation under prior 5-year MOUs, WCA fares worse under the current MOU. To understand  
18 why this is true, one needs to understand the funding structure established under the MOU and how it  
19 has been applied.

20 41. One of the main aims of the current MOU was to replace the annual, ad hoc and  
21 contentious debate over allocation of the District’s discretionary revenue with a fair but predictable  
22 formula for sharing that excess. The second was to develop a financial plan that helped the District  
23 recover from the loss of a major grant. To achieve these, the District extracted two major concessions  
24 from WCA. First, the District insisted that sharing be delayed for two years. WCA’s minimum per  
25 student public funding during those first two years was held flat at \$7,100. At the time, this figure was  
26 very close to the legal minimum. The only exception provided in the MOU was that, if the growth in  
27

28 <sup>4</sup> A MOU is a separate written agreement between a school district and a charter school detailing operation, financial and facilities issues that are not detailed in the charter school’s charter.

1 District property tax revenue in the 2014-2015 or 2015-2016 school years (the first two years of the  
2 MOU) exceeded the projected 2%, then revenues over 2% would be shared by the two schools on a  
3 per-capita basis.

4 42. True basic aid excess revenue sharing was set to begin in year three of the MOU (the  
5 2016-17 School Year). WCA would receive its LCFF revenue plus a share of the District's  
6 discretionary revenue – the "Basic Aid Excess." The MOU defines Basic Aid Excess as all District  
7 revenue less five line items: (a) LCFF minimums to each school; (b) District overhead; (c) special  
8 education spending; (d) facilities spending; and (e) revenue dedicated to a particular school. The idea  
9 was that, after mandatory revenue allocations were done, and necessary services like special education  
10 and facilities were covered, the revenue left over, if any, should be shared between the two public  
11 schools using a need-based formula. The MOU's formula for "Basic Aid Excess" sharing is driven by  
12 the state's student need-based LCFF formula.

13 43. This is where the District extracted a second major concession: if the "Basic Aid  
14 Excess" were to go negative (i.e., the line items to be subtracted from revenue in fact exceeded  
15 revenue), WCA would share in that burden. That is, if District-wide spending was high enough, WCA  
16 would get less money, not more. During the first year of Basic Aid Excess sharing, that happened.  
17 That is, the District calculated that the excess had gone negative – and it insisted that WCA return to  
18 the District a pro-rata share of this deficit based on student headcount. While neither the District's  
19 calculation of the deficit nor the per capita allocation of it were supported under the MOU, the District  
20 effectively forced WCA to pay approximately \$42,500 in funding to the District.

21 44. In any case, the assertion that the MOU is "diverting" public resources to WCA is not  
22 premised primarily on the ground that WCA is receiving excessive public revenue. Rather, it is based  
23 on the notion that the District is not charging WCA for services or costs for which it could be  
24 charging. These charges fall in essentially two categories: special education and facilities maintenance  
25 costs (including the cost of utilities).

26 45. The MOU does not directly charge WCA for these things (however, WCA does pay an  
27 increased oversight fee of 2% of LCFF revenue as a facilities charge) because the parties agreed that  
28 resources should be allocated based on need, not based on which school students attend, as the District



1 has a legal obligation to treat all in-district students equally. Accordingly, the cost of special education  
2 and cost of facilities maintenance (and utilities) are to be paid for *both* schools from the excess  
3 revenue the District enjoys by virtue of being “basic aid.” Only when that excess has been consumed,  
4 and such costs must come out of both school’s minimum revenue, would WCA be expected to bear a  
5 share of such charges separately. The notion that such charges are “standard” in other districts derives  
6 from the fact that, in state-funded districts, there is no public revenue above the minimum, and  
7 therefore costs for special education, facilities maintenance, and cost utilities, must be paid from such  
8 revenue for all schools.

9 46. The MOU is set to expire on June 30, 2019. However, the District has refused both in  
10 writing and on the record to discuss or negotiate a new MOU. The District has also refused to discuss  
11 the 2019-2020 budget in public generally.

12 **G. The District Blocked WCA From Applying for Grant Funds to Improve the District**  
13 **Facility that WCA Occupies.**

14 47. WCA is housed in a decades-old facility (some of which is more than 40 years old)  
15 while Bayside MLK’s facility was built in 2009 and has since been continuously improved, including  
16 the addition of state-of-the-art classrooms in 2013 and sophisticated, built-in audio-visual equipment  
17 in 2018-2019. Given the seriously deteriorating and potentially unsafe state of its campus, WCA  
18 sought out the opportunity to apply for additional California grant funding to repair its aging facilities  
19 at no cost to the District through California’s Proposition 51 facilities grant program.

20 48. The application put no obligation on the District or WCA to accept such funding, and  
21 the District had full control over the final decision of accepting the grant if awarded. Being awarded  
22 the grant could have provided millions of dollars to address acute deferred maintenance issues with the  
23 existing District-owned facilities, at no cost to the District. This funding could have freed up  
24 significant amounts of funds because the improved facilities would have reduced maintenance  
25 expenses to the District; these reduced costs could have been utilized by the District to address its own  
26 budgetary issues, or to increase its offerings at either of both campuses. The District Board, however,  
27 declined even put authorization of such an application to a vote. Accordingly, WCA was unable to  
28 apply for the grant, and the opportunity was lost.

1 **H. County Superintendent Burke Is Misusing Her Authority To Impose An Unlawful Policy**  
2 **That Charter School Are The Equivalent Of Private Schools For Budget Allocation**  
3 **Purposes.**

4 49. Superintendent Burke has repeatedly expressed her view that elected school board  
5 members must elevate the interests of students attending traditional public schools over the interests of  
6 students attending public charter schools. For example, in a June 25, 2018 letter to the District Board,  
7 Superintendent Burke wrote: “while it is true that many students who reside within the District attend  
8 the independent charter school[,] that does not allow the school board members to place the interests  
9 of the charter school over or *even equal to* the interests of the district.” (Emphasis added). In the  
10 context of the letter, it is clear that, by “district,” Superintendent Burke means the traditional public  
11 school. In explaining what she means in her assertion that board members must act “in the best  
12 interest of the district,” Superintendent Burke likens public charter schools to private schools or third-  
13 party vendors: “This obligation [to act in the best interest of the district] applies when the board  
14 contracts with third parties such as employee organizations, private schools, lessors, vendors and  
15 public charter schools governed by independently incorporated nonprofit corporation.” In other  
16 words, in Superintendent Burke’s view, school board members are legally duty-bound to elevate the  
17 interests of one set of public school students over the interests another set of public school students  
18 based purely on which type of public school the students’ families choose to attend.

19 50. Superintendent Burke’s view has been echoed by District Board members. For example,  
20 during the District Board’s March 17, 2017 Governance Workshop, held on the Bayside MLK  
21 campus, Board member Debra Turner stated: “My sense of duty is, first and foremost, to the children  
22 in the district school, which is here [gesturing to her location].” (District Board Budget Workshop,  
23 March 17, 2017, viewed at: [https://drive.google.com/file/d/0B4m61iscDp34bklsVnpobnp](https://drive.google.com/file/d/0B4m61iscDp34bklsVnpobnpBMU0/view)  
24 [BMU0/view](https://drive.google.com/file/d/0B4m61iscDp34bklsVnpobnpBMU0/view)). The District Superintendent has also echoed that view. For example, at the District  
25 Board’s Budget Workshop of February 5, 2018, then-Superintendent McCoy, with now-Interim  
26 Superintendent Terena Mares by his side, delivered a presentation that included the assertion that the  
27 default budget (i.e., absent a Board vote to the contrary) must minimally fund and maximally charge  
28 WCA. (<https://prezi.com/view/rUvTGL7tjIR97BUldkJf/>)

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1           51. As noted above, the law mandates the opposite: public charter schools are part of the  
2 public school system and stand on equal legal footing with traditional public schools with respect to  
3 the allocation of public educational resources. Nonetheless, Superintendent Burke has threatened to  
4 invoke her power to take financial control of the District unless her unlawful policy position is  
5 implemented in the District’s budget decisions. Superintendent Burke’s office has repeatedly  
6 responded to District budget submissions indicating that, unless the District acts in accordance with  
7 her view in the adoption of a new MOU with WCA, she will use the fiscal intervention authority  
8 accorded to the County Superintendent under Assembly Bill (“AB”) 1200 to assume financial control  
9 of the District. That is, she is using the threat of that legal authority to achieve an unlawful result: to  
10 force the District Board to adopt a budget that subordinates the interests of charter school students to  
11 the interests of students attending the traditional school. As explained below, this threat worked: Ms.  
12 Burke achieved a minimum three-member majority for her desired cuts at WCA, with one member  
13 explicitly citing that potential loss of local control as a reason for voting for a budget.

14 **I. The District Adopted A Budget Implementing Superintendent Burke’s Unlawful Policy**  
15 **Position.**

16           52. In March 2018, a bare three-person majority of the District Board adopted the  
17 recommendation of the “Budget Advisory Committee” – from which WCA representatives were  
18 excluded – to balance the District’s budget on the backs of WCA students. It recommended that the  
19 District not share any of the now \$3.4 million in excess revenue the District enjoys, and to impose the  
20 maximum charges on WCA for facilities and special education. The three-person majority then  
21 adopted a 2019-2020 budget projection that reflected Superintendent Burke’s view that public charter  
22 schools should be treated as private schools for purposes of discretionary resource allocations and fees  
23 for services.

24           53. This budget was adopted as a direct result of Superintendent Burke’s insistence that the  
25 District Board prioritize the interests of traditional public school students over the interests of public  
26 charter school students, and that should they fail to adopt the Proposed Interim Budget, Superintendent  
27 Burke would assume fiscal control. At least one member of the bare three-member majority voting on  
28 the Interim Budget, Board Trustee Joshua Barrow (“Trustee Barrow”), expressly tied his vote to the

1 potential loss of local control; before voting to approve, Trustee Barrow stated on the record: “We’re  
2 essentially required to approve an interim report here. A personal point of frustration for me ever since  
3 I’ve been on this board is that we are essentially required to approve it on the spot when we receive  
4 it...it is very awkward to sit here and say here is your report: you’ve gotta approve it and if you don’t,  
5 you lose control.” (District Board Meeting, March 14, 2018, viewed at:  
6 [https://drive.google.com/file/d/1hkcQBoogMIZnd0xDRt6\\_HOAtyFcFQxiQ/view](https://drive.google.com/file/d/1hkcQBoogMIZnd0xDRt6_HOAtyFcFQxiQ/view)).

7 54. The District Board did, however, vow to conduct an open and transparent dialogue with  
8 WCA and the community before finalizing these draconian cuts (i.e., cuts to Basic Aid Excess and  
9 increased fees). They emphasized that there was plenty of time to discuss and make appropriate  
10 changes. No such dialogue has occurred, despite repeated calls from WCA and the community for  
11 the District to honor those promises. Then, at the District Board’s December 13, 2018 Board  
12 Meeting, the District Board voted to approve the interim budget without concern for Walnut Creek’s  
13 students and stated on the record that they would not discuss the budget decision.

14 55. The cuts contemplated by the District's 2019-2020 projection, if implemented, will  
15 ultimately result in deeply harmful reductions in programming for students, which will inflict a real  
16 and appreciable adverse impact on those students’ fundamental right to education. At no time has the  
17 District considered the impact of its decision on the 80% of District students its budget will adversely  
18 affect, nor has it considered alternatives that would balance the budget without classroom cuts. Those  
19 alternatives exist, and have been pointed out to the District, but it has refused to consider them.

20 56. On January 30, 2019, the District Superintendent sent WCA a letter demanding that  
21 WCA revise its budget projections to reflect the \$1 million in cuts the District tentatively adopted ten  
22 months ago and again approved at the December 13, 2018 Board Meeting. The District’s January  
23 30th letter treats the 2019-2020 budget decision as final and demands that WCA must now show how  
24 it will cope with these cuts that clearly violate California law requiring full and fair funding for *all*  
25 public-school students -- including those who attend independent public charter schools. It also  
26 indicates that, if WCA's revised budget impacts programming, the revised budget may be a "material  
27 change" to WCA's charter, raising the specter of charter revocation.

28 ///



1           61.     For a charter school to be eligible to receive Prop. 39 facilities, it must submit a request  
2 for facilities to the school district no later than November 1 in the year preceding the year in which  
3 facilities are to be allocated.

4           62.     By no later than the following February 1, the school district must prepare and provide  
5 to the charter school a preliminary proposal for reasonably equivalent, contiguous, and furnished and  
6 equipped facilities space to be allocated to the charter school. At a minimum, the preliminary proposal  
7 shall include: “(1) the projections of in-district classroom ADA on which the proposal is based, (2) the  
8 specific location or locations of the space, (3) all conditions pertaining to the space, including a draft  
9 of any proposed agreement pertaining to the charter school’s use of the space, and (4) the projected pro  
10 rata share amount and a description of the methodology used to determine that amount. The district  
11 shall also provide the charter school a list and description of the comparison group schools used in  
12 developing its preliminary proposal, and a description of the differences between the preliminary  
13 proposal and the charter school’s facilities request...” (5 CCR § 11969.9, subd. (f).) (Educ. Code §  
14 47614, subd. (b).)

15           63.     Prop. 39 requires the facilities allocated to be “reasonably equivalent to those in which  
16 the students would be accommodated if they were attending other public schools of the district.”  
17 (Educ. Code § 47614 subd. (b).) The Implementing Regulations define a three step process a school  
18 district must go through to determine if the facilities allocated to the charter school are “reasonably  
19 equivalent” to those in which the students would be accommodated if they were attending public  
20 schools of the school district. (5 CCR § 11969.3.) The first step involves identifying the comparison  
21 group of schools. The comparison group of schools must consist of similar grade level schools that  
22 serve students living in the high school attendance area where the largest number of students reside.  
23 The second step involves a determination of the reasonably equivalent allocation of teaching station  
24 space (i.e., classrooms), specialized classroom space (e.g., labs) and nonclassroom space (all other  
25 space at the site) based upon the allocations of these types of space at the comparison schools. The  
26 third step requires an analysis of the condition of the facilities allocated to the charter school to  
27 determine if it is reasonably equivalent to the condition of the comparison schools.

28 ///

1           64.     After receipt of the preliminary proposal, the charter school shall review and comment  
2 on the preliminary proposal, as well as express concerns and make counter-proposals to the school  
3 district no later than March 1. (5 CCR § 11969.9, subd. (g).) The school district must then provide a  
4 final offer no later than April 1. (*Id.*) The charter school has thirty (30) days to accept or reject the  
5 district’s final offer of facilities.

6           65.     WCA submitted its Facilities Request Letter to the District on October 25, 2018. On  
7 February 1, 2019, the District responded with its Preliminary Proposal.

8     **A.     The District’s Preliminary Proposal Does Not Offer Reasonably Equivalent Facilities.**

9           66.     The District’s Preliminary Proposal fails to meet the requirements of Prop. 39, in part  
10 because the District has failed to provide reasonably equivalent facilities as required. Under Prop. 39  
11 and the State Board of Education’s Implementing Regulations the District must provide WCA public  
12 school facilities that are “reasonably equivalent” to school facilities the students would attend if not  
13 attending WCA. The Implementing Regulations define “reasonable equivalency” by way of capacity  
14 and condition.

15           67.     WCA is informed and believes, and thereon alleges, that the District’s final offer of  
16 facilities, which is due by April 1, 2019, will suffer from the same or similar deficiencies as its  
17 Preliminary Proposal.

18     **B.     The District’s Preliminary Proposal Does Not Offer Reasonably Equivalent Conditions.**

19           68.     The Preliminary Proposal provides WCA with a facility whose condition is significantly  
20 worse than the comparison school, Bayside MLK. Bayside MLK facility is far superior to the WCA  
21 campus in both capacity and condition, and thus the District cannot allocate the Nevada Street facility  
22 (WCA’s current location) to WCA without making substantial improvements to the facility to make it  
23 reasonably equivalent to Bayside MLK.

24           69.     When making an allocation of facilities, a district must determine whether the facility it  
25 proposes to allocate is reasonably equivalent by determining whether the condition of facilities  
26 provided to a charter school is reasonably equivalent to the condition of comparison group schools.  
27 Pursuant to 5 CCR section 11969.3(c), the District must assess “such factors as age (from latest

28     ///

1 modernization), quality of materials, and state of maintenance.” The District must also assess the  
2 following factors:

- 3 a. School site size;
- 4 b. The condition of interior and exterior surfaces;
- 5 c. The condition of mechanical, plumbing, electrical, and fire alarm systems,  
6 including conformity to applicable codes;
- 7 d. The availability and condition of technology infrastructure;
- 8 e. The condition of the facility as a safe learning environment including, but not  
9 limited to, the suitability of lighting, noise mitigation, and size for intended use;
- 10 f. The condition of the facility’s furnishings and equipment; and
- 11 g. The condition of athletic fields and/or play area space.

12 70. A failure to consider even one of these factors has resulted in a court determination that  
13 a school district violated Prop. 39. (*Bullis Charter School v. Los Altos School District* (2009) 200  
14 Cal.App.4th 1022.) It is clear from the Preliminary Proposal that the District did not perform the  
15 legally required analysis of the condition of the proposed site as compared to the District’s other  
16 school campus. Rather, the District has placed WCA students in relatively cramped and sub-standard  
17 conditions with broken and discarded furniture and equipment, thereby causing harm and attempting to  
18 inhibit the types of educational programs and activities that can support. Had the District actually  
19 performed an analysis of the condition of the WCA campus and the Bayside MLK campus, this  
20 analysis would have demonstrated that the condition of the WCA campus is greatly inferior and thus  
21 not reasonably equivalent to the Bayside MLK facility (i.e., the District’s comparison school site).

22 71. Specifically, the Bayside MLK campus was newly constructed as of 2009-2010. In  
23 2013, three additional state-of-the-art classrooms and playground were added to the campus. Other  
24 recent upgrades made in the past year include a new school-wide audio-visual system, which includes  
25 ceiling projectors, speakers and screens. The January 2019 facilities inspection of campus resulted in  
26 a classification of the condition as “Excellent,” with an overall score of 95.9.

27 72. By contrast, the WCA campus is decades old, with some buildings in excess of 40 years  
28 of age and is in urgent need of major repairs. The exteriors of all buildings on campus are in disrepair,



1 with metastatic wet rot in most areas of upper campus. This wet rot is also compromising the  
2 structural integrity of all connected structures on the upper campus. This creates an immediate health  
3 and safety threat related to mold, and a medium-term issue with disintegration of the building  
4 envelope. As the result of water intrusion in the roof, numerous ceiling tiles have fallen down or are  
5 about to fall, or have become moldy and stained as a result of water intrusion. Water pools in the  
6 library and elsewhere during any significant rainfall.

7 73. There are also serious issues with the electrical system on the campus, with insufficient  
8 outlets, insufficient voltage, and exposed wires, outlets and extension cords. In addition, wall  
9 coverings are peeling all over campus, water fountains do not work, lighting fixtures are falling off the  
10 ceiling, and fire extinguishers are not properly serviced. Bathrooms are in poor condition with some  
11 fixtures inoperable. In addition, there are major potholes in the upper parking lot access driveway and  
12 major drainage problems on the one outdoor playing field on the campus.

13 74. The District has also not responded to repeated and urgent requests, made over a period  
14 of years, to replace equipment that poses a clear and present danger to the students. The modular  
15 tables in the multi-purpose room, which we estimate date from the 1980s, are rapidly deteriorating.  
16 WCA leadership has repeatedly identified these to the District for several years as a safety hazard.  
17 Two years ago, a student's foot was broken by a flaw in the table. Within the last two months, a  
18 kindergarten student was nearly crushed when a table's locking mechanism failed and the table, which  
19 had been stored in wall, fell on the student. The student was taken by ambulance to the emergency  
20 room with a head laceration, but the outcome could have been much worse if not for the heroic efforts  
21 of a nearby parent.

22 75. The January 2019 inspection by the District's facilities director classified the condition  
23 of the campus as a whole as "Fair" with an overall score of 89. The report concluded: "the school is  
24 not in good repair. Some deficiencies note[d] are critical and widespread."

25 76. Thus, the District has failed to allocate reasonably equivalent facilities by way of  
26 condition as required by Prop. 39.

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1 **C. The District’s Preliminary Proposal Does Not Allocate Reasonably Equivalent Classrooms.**

2 77. All California public school students are entitled to learn in a classroom that is safe, that  
3 is not crowded with too many students, and that is conducive to a supportive learning environment. In  
4 accordance with the Implementing Regulations, the District must provide a facility to the Charter  
5 School with the same ratio of teaching stations to average daily attendance (“ADA”) as those provided  
6 to students in the comparison group of schools, as well as a proportionate share of specialized  
7 classroom space and non-teaching space, and are to be allocated at each grade level consistent with the  
8 ratios provided by the District to its students. (5 CCR § 11969.3(b)(1).)

9 78. The Preliminary Proposal further lacks sufficient information regarding the manner in  
10 which the District calculated the allocation of teaching stations, specialized classroom space, and non-  
11 teaching station space.

12 79. Because the Preliminary Proposal does not assess all of the factors required by the  
13 Implementing Regulations, the District has not complied with 5 CCR section 11969.3(c). According  
14 to the facilities documents provided on the District’s website, the Bayside MLK site has 14 total  
15 classrooms on the school site. As the Bayview MLK website indicates that nine (9) of the rooms are  
16 used for general instruction, and four (4) are used for art, music and special education instruction, we  
17 have assumed that ten (10) of the teaching stations on the site are either used for general instruction or  
18 are unassigned, and thus must be counted in the teaching station to ADA ratio.

19 80. As a result, the teaching station to ADA ratio at Bayside MLK is  $103.68^6 \div 10 = 10.37$   
20 or 10:37:1.

21 81. Applied to WCA’s projected in-District ADA of 310.84, WCA would be entitled to  
22 29.97, or thirty (30) teaching stations. The District’s Preliminary Offer allocates eighteen (18) teaching  
23 stations to WCA, twelve (12) fewer than should be allocated, and thus fails to allocate a reasonably  
24 equivalent number of teaching stations as required by Prop. 39.

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26 ///

27 \_\_\_\_\_  
28 <sup>6</sup> The District’s current enrollment at Bayside MLK appears to be 108 students. We have conservatively assumed that the District’s attendance rate is 96%, even though the average attendance rate for Bayside MLK is lower. Thus, the estimated current ADA for Bayside MLK is 103.68.

1 **D. The District’s Preliminary Proposal Does Not Allocate Reasonably Equivalent Specialized**  
2 **Classroom Space and Non-Teaching Station Space.**

3 82. WCA is entitled to reasonable allocations of specialized and non-teaching station space  
4 pursuant to 5 CCR section 11969.3(b)(2)-(3). 5 CCR section 11969.3(b)(2) requires that if a school  
5 district includes specialized classroom space, such as science laboratories, in its classroom inventory,  
6 the Proposition 39 offer of facilities provided to a charter school shall include a share of the  
7 specialized classroom space. The Preliminary Proposal must include “a share of the specialized  
8 classroom space and/or a provision for access to reasonably equivalent specialized classroom space,”  
9 and “the amount of specialized classroom space allocated and/or the access to specialized classroom  
10 space provided shall be determined based on three factors:

- 11 a. The grade levels of the charter school’s in-district students;
- 12 b. The charter school’s total in-district classroom ADA; and
- 13 c. The per-student amount of specialized classroom space in the comparison group  
14 schools.

15 83. As such, the District must allocate specialized classroom space, such as science  
16 laboratories, art rooms, computer rooms, music rooms, etc. commensurate with the in-District  
17 classroom ADA of WCA. The allocated site must include all of the specialized classroom space  
18 included across all of the different grade levels. The District may not include facilities installed and  
19 paid for by WCA in its analysis. (*Bullis, supra*, 200 Cal.App.4th at 1059.)

20 84. In addition, the District must provide non-teaching station space commensurate with the  
21 in-District classroom ADA of WCA and the per-student amount of non-teaching station space in the  
22 comparison group schools. (5 CCR § 11969.3(b)(3).) Non-teaching space is all of the remainder of  
23 space at the comparison school that is not identified as teaching station space or specialized space and  
24 includes, but is not limited to, administrative space, a kitchen/cafeteria, a multi-purpose room, a  
25 library, a staff lounge, a copy room, storage space, bathrooms, a parent meeting room, special  
26 education space, nurse’s office, RSP space, and play area/athletic space, including gymnasiums,  
27 athletic fields, locker rooms, and pools or tennis courts. (5 CCR § 11969.3(b)(3).)

28 ///

1           85.     In other words, the allocation of specialized teaching space and non-teaching space is  
2 based on an analysis of the square footage of each category of space available to students at the  
3 comparison schools (i.e., “the per-student amount of specialized classroom space in the comparison  
4 group schools”) (5 CCR § 11969.3(b)(2)(C).) Moreover, just because one kind of specialized  
5 classroom or non-teaching station space is not available at all the comparison schools, the District may  
6 not fail to provide an allocation of that kind of space (especially here, where the District averaged the  
7 specialized classroom and non-teaching station space over all the comparison schools).

8           86.     “[W]hile a Proposition 39 analysis does not necessarily compel a school district to  
9 allocate and provide to a charter school each and every particular room or other facility available to the  
10 comparison group schools, it must at least account for the comparison schools' facilities in its proposal.  
11 A determination of reasonable equivalence can be made only if facilities made available to the  
12 students attending the comparison schools are listed and considered. And while mathematical  
13 exactitude is not required (*cf. Sequoia, supra*, 112 Cal.App.4th at p. 196 [charter school need not  
14 provide enrollment projections with "arithmetical precision"]), a Proposition 39 facilities offer must  
15 present a good faith attempt to identify and quantify the facilities available to the schools in the  
16 comparison group--and in particular the three categories of facilities specified in 5 CCR section  
17 11969.3, subdivision (b) (i.e., teaching stations, specialized classroom space, and non-teaching station  
18 space)--in order to determine the “reasonably equivalent” facilities that must be offered and provided  
19 to a charter school.” (*Bullis, supra*, 200 Cal.App.4th 296, 336.)

20           87.     Therefore, according to the Implementing Regulations, the allocation of specialized  
21 teaching space and non-teaching space is based on an analysis of the square footage of these types of  
22 space available to students at the comparison schools (specifically, “the per-student amount” of  
23 specialized classroom space/non-teaching station space in the comparison group schools”). (5 CCR  
24 section 11969.3(b)(2) and (3).)

25           88.     Based on WCA’s review of publicly available information as described above, WCA  
26 estimates it is entitled to the following allocation of specialized and non-teaching station spaces:

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**Square Footage of Specialized Classroom and Non-teaching Station Space at Bayside MLK**

	<b>Bayview/MLK Facility Square Footage</b>	<b>Square Feet/ADA</b>	<b>Prop. 39 Required Allocation of Square Feet</b>
<b>ADA</b>	103.68		
<b>MPR Space</b>	6,019	58.05	18,045.39
<b>Library Space</b>	1,221	11.78	3,660.64
<b>Administrative Space</b>	4,461	43.03	13,374.39
<b>Restroom Space</b>	1,429	13.78	4,284.24

**Square Footage of Space at WCA Campus Compared to Required Allocation**

	<b>WCA Facility Square Footage</b>	<b>Current Square Feet/ADA</b>	<b>Prop. 39 Required Allocation of Square Feet</b>	<b>Difference between Allocated and Required Space</b>
<b>ADA</b>	310.84			
<b>MPR Space</b>	2,365.21	7.84	18,045.39	-15,680.18
<b>Library Space</b>	2,549	8.44	3,660.64	-1,111.64
<b>Administrative Space</b>	5,744.47	19.03	13,374.39	-7,629.92
<b>Restroom Space</b>	1,123.94	3.72	4,284.24	-3,160.30

89. As set forth in the above tables, WCA determined it is entitled to an allocation of at least an additional 15,680.18 square feet of Multi-Purpose Room space, 1,111.64 square feet of Library space, 7,629.92 square feet of Administrative space, and 3,160.30 square feet of Restroom space. As such, the District’s Preliminary Offer does provide a reasonably equivalent allocation of facilities and does not comply with Prop. 39 and the Regulations.

**E. The District’s Preliminary Proposal Improperly Calculates Pro Rata Share.**

90. Furthermore, the District’s pro rata share calculation is illegal, as it includes a number of District facilities costs that WCA pays for itself, or that are related to facilities obligations that are WCA’s responsibility and thus are unlawfully included in the pro rata share calculation.

91. The Prop. 39 Implementing Regulations set forth the detailed methodology for calculating the pro rata share, which is defined as “a per-square-foot amount equal to those school district facilities costs that the school district pays for with unrestricted revenues from the district’s general fund, as defined in 5 CCR section 11969.2(f) and (g) and hereinafter referred to as

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1 “unrestricted general fund revenues,” divided by the total space of the school district times (2) the  
2 amount of space allocated by the school district to the charter school.” (5 CCR § 11969.7.)

3 92. 5 CCR section 11969.7 also states “facilities costs includes: (1) contributions from  
4 unrestricted general fund revenues to the school district's Ongoing and Major Maintenance Account  
5 (Educ. Code § 17070.75), Routine Restricted Maintenance Account (Educ. Code § 17014), and/or  
6 deferred maintenance fund; (2) costs paid from unrestricted general fund revenues for projects eligible  
7 for funding but not funded from the deferred maintenance fund; (3) costs paid from unrestricted  
8 general fund revenue for replacement of facilities-related furnishings and equipment, that have not  
9 been included in paragraphs (1) and (2), according to school district schedules and practices”; and (4)  
10 debt service costs. Facilities costs “do not include any costs that are paid by the charter school,  
11 including, but not limited to, costs associated with ongoing operations and maintenance and the costs  
12 of any tangible items adjusted in keeping with a customary depreciation schedule for each item.”  
13 (Emphasis added.)

14 93. The Implementing Regulations provides that “[t]he ongoing operations and maintenance  
15 of facilities and furnishings and equipment is the responsibility of the charter school. Projects eligible  
16 to be included in the school district deferred maintenance plan established pursuant to Education Code  
17 section 17582 and the replacement of furnishings and equipment supplied by the school district in  
18 accordance with school district schedules and practices, shall remain the responsibility of the school  
19 district.” (5 CCR § 11969.4(b).)

20 94. Thus, the pro rata share calculation may not include any District facilities costs for  
21 ongoing operations and maintenance (as these costs are costs that are incurred by WCA under the  
22 law), just major and deferred maintenance costs.

23 95. The Facilities Use Agreement that accompanied the Preliminary Proposal is entirely  
24 opaque as to how the District proposes to divide maintenance responsibilities on the campus.  
25 However, Section 3.A and 3.D appear to contemplate that the District will do all of the maintenance on  
26 the campus and WCA will be responsible for the custodial services.

27 96. The District’s Preliminary Proposal provides a spreadsheet with two possible pro rata  
28 share calculations, one with WCA remaining as a school of the District for special education purposes,

1 and the other with WCA as its own special education local educational agency.

2 97. The District includes five categories of costs in its pro rata share calculation: “Classified  
3 Staff,” “Employee Benefits,” “Supplies,” “Operating Expenses,” “Facility Lease Payments,” and  
4 “Deferred Maintenance,” for a total of \$522,742 in claimed facilities costs.

5 98. However, as noted above, WCA is entitled to perform the ongoing operations and  
6 maintenance on its campus, which includes custodial services, and the District may only perform the  
7 major and deferred maintenance. It is WCA’s understanding that the District maintains only three  
8 maintenance-related employees, and does not perform any of the major maintenance on its site –  
9 rather, it contracts with outside vendors to perform major maintenance.

10 99. As such, none of the District’s costs associated with its Custodial/Maintenance/  
11 Grounds/Driver Staff may be included in the pro rata share, nor may operating expenses or supplies.

12 100. WCA also questions the District’s \$195,600 in “Facility Lease Payments.” The District  
13 owns only two facilities, Bayside MLK and WCA, and operates its offices out of the Bayside MLK  
14 site, and all portables on both sites are old and, we believe, owned by the District.

15 101. The District has until April 1, 2019 to issue its Final Offer, fixing the defects in its  
16 Preliminary Proposal. While WCA will await that final response before formally asserting a claim  
17 under Proposition 39, it is not anticipating a compliant Final Offer. In any event, it includes these  
18 allegations regarding facilities in support of its claims that the District is not meeting its obligation to  
19 act in the best interests of all public school students in the District and allocate resources based on  
20 need and not based on the form of governance of the schools.

21 **VI. CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**

23 **Writ of Mandate Pursuant to Code of Civil Procedure § 1085**

24 **Failure to Allocate Full and Fair Funding under the CSA**

25 **(Against the District)**

26 102. Petitioner/Plaintiff realleges and incorporates every allegation contained in paragraphs  
27 1-101 above as though set forth in full.

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1           103. A traditional writ of mandate under Code of Civil Procedure section 1085 is the method  
2 of compelling the performance of a legal, ministerial duty, or correcting actions that are “arbitrary,  
3 capricious, lacking in evidentiary support, or [] made without due regard for the petitioner’s rights.”  
4 (*Pomona Police Officers' Assn. v. City of Pomona* (1997) 58 Cal.App.4th 578, 583-584; *Sequoia*  
5 *Union High School Dist. v. Aurora Charter High School* (2003) 112 Cal.App.4th 185, 195.) A petition  
6 for traditional mandamus is appropriate in all actions “to compel the performance of an act which the  
7 law specially enjoins as a duty resulting from an office, trust, or station....” (Code Civ. Proc. § 1085.)  
8 A writ will lie when there is no plain, speedy, and adequate alternative remedy; the respondent has a  
9 duty to perform; and the petitioner has a clear and beneficial right to performance. (*Pomona Police*  
10 *Officers' Assn., supra*, 58 Cal.App.4th at 584 (internal citations omitted).) WCA has no adequate and  
11 speedy remedy at law to resolve the parties’ disputes.

12           104. As set out above, the Charter Schools Act of 1992 was intended to provide “full and fair  
13 funding” to charter schools in an effort to improve learning through “expanded learning experiences”  
14 and “different and innovative teaching methods. (Educ. Code, §§ 47601, 47615(a)(1), (a)(3),  
15 47612(a).) The Act was intended to provide parents and pupils with “expanded choices in the types of  
16 educational opportunities” available to them. (Educ. Code, § 47601.) And the Legislature expressly  
17 stated that the Act was to be “liberally construed” to ensure charter schools would be entitled to “full  
18 and fair funding” and that they would be under the jurisdiction of the Public School System, and the  
19 exclusive control of the officers of the public schools. (Educ. Code, § 47615(b).) The mandate of full  
20 and fair funding is in line with the legislative intent that charter schools become an integral part of  
21 California’s educational system and that their establishment be encouraged. (Educ. Code, § 47605.)  
22 See also, *Today’s Fresh Start, Inc. v. Los Angeles County Office of Education*, 57 Cal.4th 197, 207  
23 (2013) (“Though independently operated, charter schools fiscally are part of the public school system;  
24 they are eligible equally with other public schools for a share of state and local education funding.”)  
25 (Emphasis added).

26           105. The premise that public charter school students should be funded at rate that is up to four  
27 times lower than similarly situated traditional students is particularly misguided in a district such as  
28 the District, where a majority of high-need students attend the charter school.







1 officials entrusted with governing a community’s public schools. See, California School Boards  
2 Association, [https://www.csba.org/en/GovernanceAndPolicyResources/EffectiveGovernance/  
3 CharterSchool](https://www.csba.org/en/GovernanceAndPolicyResources/EffectiveGovernance/CharterSchool): [“Boards must exercise due diligence in fulfilling their responsibilities with regard to  
4 charter schools, and must act in the best interests of all students.”]

5 119. The duty the District owes to all students is further supported by the District Board’s  
6 own bylaws, which state: “The Board of Trustees believes that its primary responsibility is to act in the  
7 best interests of every student in the district. The Board also has major commitments to  
8 parents/guardians, all members of the community, employees, the state of California, laws pertaining  
9 to public education, and established policies of the district. To maximize Board effectiveness and  
10 public confidence in district governance, Board members are expected to govern responsibly and hold  
11 themselves to the highest standards of ethical conduct.” Sausalito-Marin Board Bylaws, BB 9005.

12 120. As Superintendent of Schools, Superintendent Burke is also an elected public official,  
13 who owes a fiduciary duty to all her constituents. In her 2018 campaign, Superintendent Burke’s ran  
14 on a platform that stated: “I will continue to work hard for *all* of our children in *all* of our schools.”  
15 (Emphasis in original). *All* children in *all* schools includes those that attend WCA.

16 121. The District owes a fiduciary duty to all students in the district (including those in  
17 charter schools that would ordinarily go to traditional public schools) and Superintendent Burke owes  
18 a fiduciary duty to all students in Marin County, rather than merely students attending Bayside MLK.  
19 And yet, District Board members and Superintendent Burke are on record stating that they must  
20 prioritize students that attend Bayside MLK, even if it is to the detriment of the students that attend  
21 WCA.

22 122. Declaratory relief is appropriate and necessary, as an actual controversy exists between  
23 Plaintiff and Respondents. Plaintiff seeks a judicial determination of the rights and legal duties of the  
24 parties and a declaratory judgment that the Respondents, individually and collectively, have a duty to  
25 act in the best interests of all public school students, regardless of which public school they attend, and  
26 that they may not favor or subordinate the interests of public school students based on whether those  
27 students attend a traditional public school or a public charter school.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays judgment as follows:

1. On the First Cause of Action, that a Writ of Mandate be issued to the District to compel the District to allocate full and fair funding to WCA in accordance with Education Code section 47615 subd. (b) and related provisions.
2. On the Second Cause of Action, that a Declaratory Judgment be entered declaring that the District's failure to allocate full and fair funding to WCA violates Education Code section 47615 subd. (b) and related provisions.
3. On the Third Cause of Action, that this Court enter an order stating that the District's historical and prospective unequal and disparate allocation of resources to in-district minority or socio-economically-disadvantaged students violates the Equal Protection Clause of California Constitution, article I, section 7(a).
4. On the Fourth Cause of Action, that a Declaratory Judgment be entered declaring that Respondents, individually and collectively, have a duty to act in the best interests of all public school students in the District and not to elevate the interests of students at one public school over the interests of the students at another public school (i.e., traditional or charter).
5. For All Causes of Action, for preliminary and permanent injunctive relief pursuant to Code of Civil Procedure section 526, including but not limited to compelling the District to allocate full and fair funding, enjoining the District from violating equal protection, enjoining the District and the Superintendent from breaching their fiduciary duties to treat all public school students in the District equally.
6. Plaintiff respectfully requests an award of costs, disbursements, and reasonable attorneys' fees and expenses pursuant to section 1021.5 of the California Code of Civil Procedure.

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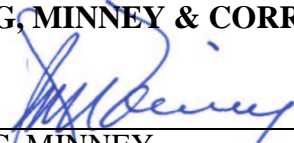
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- 7. That this Court retain continuing jurisdiction over this matter until such time as the Court has determined that Respondents have fully and properly complied with its Orders; and
- 8. For such other and further relief as the court may deem proper.

Dated: March 5, 2019

**YOUNG, MINNEY & CORR, LLP**

By:   
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PAUL C. MINNEY  
*Attorneys for Petitioner/Plaintiff,*  
WILLOW CREEK ACADEMY

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**VERIFICATION**

I, KURT WEINSHEIMER, am the BOARD PRESIDENT OF WILLOW CREEK ACADEMY, and I am authorized to make this verification on its behalf. I have read the foregoing: **WILLOW CREEK ACADEMY’S PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** and know its contents. I am informed and believe that the matters stated herein are true and correct and on that ground certify or declare under penalty of perjury under the laws of the State of California that the same are true and correct.

Executed this 4<sup>th</sup> day of March 2019, at Golden, British Columbia.

DocuSigned by:  
*Kurt Weinsheimer*  
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KURT WEINSHEIMER