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OF ORIGINAL FILED  
Los Angeles Superior Court

JUL 21 2008

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18 New West Charter Middle School

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 COUNTY OF LOS ANGELES

21 CENTRAL DISTRICT

BS 115979

22 NEW WEST CHARTER MIDDLE SCHOOL,  
23 A public charter school,

24 Petitioner,

25 v.

26 LOS ANGELES UNIFIED SCHOOL DISTRICT;  
27 BOARD OF EDUCATION OF THE LOS  
28 ANGELES UNIFIED SCHOOL DISTRICT; and  
DAVID L BREWER III, in his capacity as  
Superintendent of Schools,

Respondents.

Case No.:

**VERIFIED PETITION FOR WRIT OF  
MANDATE**

(Code Civ. Proc. §1085)

PETITIONER AND PLAINTIFF NEW WEST CHARTER MIDDLE SCHOOL ("New West" or "Charter School" or "Petitioner") brings this action seeking a peremptory writ of mandate on behalf of itself and its more than 300 current students, as well as the 689 prospective students who applied for admission to New West for fall 2008, to compel the Los Angeles Unified School District ("LAUSD" or "District") to provide reasonably equivalent facilities to

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1 charter school students in accordance with Proposition 39 and to immediately cease and desist  
2 from all activities that are contrary to the express provisions of law.

3 LAUSD<sup>1</sup> is failing its public school students who attend charter schools by  
4 refusing to follow the law that requires LAUSD facilities to be allocated fairly for the benefit of  
5 *all* public school students, including those attending charter schools. To remedy this immediate  
6 and grievous harm, Petitioner seeks an alternative and/or peremptory writ of mandate to (1)  
7 compel LAUSD to comply with the law immediately; (2) to honor the facilities offer that it made  
8 to New West on April 1, 2008; (3) to refrain from taking any action which might render the  
9 offered facilities unavailable for New West's occupation during the next school year  
10 (2008/2009); and (4) for damages incurred by Petitioner who has been required to partially meet  
11 the facilities needs of the Charter School by renting commercial facilities at a higher cost than the  
12 public facilities controlled by LAUSD to which New West is entitled. By this Verified Petition,  
13 Petitioner alleges:

14 **INTRODUCTION**

15 1. Proposition 39, a statutory initiative, also known as the "Smaller Classes, Safer  
16 Schools and Financial Accountability Act," requires school districts like LAUSD to provide  
17 public charter schools and the students who opt to attend those public charter schools with  
18 "reasonably equivalent" facilities to those they would have if they attended district-run schools.  
19 LAUSD's failure to provide such facilities to New West poses an immediate harm to its more  
20 than 300 charter school students within LAUSD, and the more than 300 *additional* students that  
21 could have attended the school had the District complied with its statutory obligations.

22 2. The relevant portions of Proposition 39, as codified in the Education Code are as  
23 follows:

24 47614. (a) The intent of the people in amending Section 47614 is that public  
25 school facilities should be shared fairly among *all* public school pupils, *including*  
26 *those in charter schools.*

27 (b) Each school district *shall make available, to each charter school*  
28 *operating in the school district, facilities sufficient for the charter school to*  
*accommodate all of the charter school's in-district students in conditions*  
*reasonably equivalent to those in which the students would be accommodated if*  
*they were attending other public schools of the district. Facilities provided shall*

<sup>1</sup> "LAUSD" as used herein refers cumulatively to Respondents the Los Angeles Unified School District, the Board of Education of the Los Angeles Unified School District, and Superintendent of Schools David L. Brewer III.

1 be contiguous, furnished, and equipped, and shall remain the property of the  
2 school district. The school district shall make reasonable efforts to provide the  
3 charter school with facilities near to where the charter school wishes to locate, and  
4 shall not move the charter school unnecessarily.

(Ed. Code § 47614 (italics added for emphasis).)

5 3. New West followed all appropriate procedures and requirements as specified  
6 under the law to request reasonably equivalent facilities for its charter school. LAUSD failed to  
7 comply with its obligations under Proposition 39 and issued a legally defective offer of facilities,  
8 and then, contrary to the express provisions of law unilaterally rescinded its offer immediately  
9 after New West accepted the offer – leaving New West with *no* facilities for more than 300  
10 students next year.

11 4. LAUSD's conduct is unlawful. It presents an untenable breach of its entrusted  
12 public responsibility as an agent of public resources to deliver educational services, including  
13 facilities. LAUSD has the funds to implement Proposition 39 properly – LAUSD has raised  
14 billions of dollars through property tax assessments, parcel taxes, and bonds, \$120 million of  
15 which were specifically earmarked for charter school facilities. LAUSD has an unequivocal legal  
16 obligation to house all public school children (charter and non-charter) equitably. LAUSD has  
17 failed to meet its obligations under Proposition 39 to New West and its students.

18 **THE PARTIES**

19 5. Petitioner New West is a California public charter school approved by the State  
20 Board of Education, and operated as a California non-profit corporation in accordance with  
21 Education Code section 47604. New West is a highly successful public charter middle school  
22 located in West Los Angeles. New West currently provides a 6<sup>th</sup> through 8<sup>th</sup> grade education to  
23 over three hundred (300) LAUSD resident students, and has the legal right and capacity to enroll  
24 600 students under its charter if it had space in which to educate them. New West, its current  
25 students and the 689 applicants for less than 80 spaces available for fall 2008, have been greatly  
26 harmed and are continuing to be greatly harmed by LAUSD's long-standing and continuing  
27 failure to comply with Proposition 39. In addition to seeking relief on its own behalf, New West  
28 is suing in a representative capacity on behalf of its current students, as well as the prospective  
students who have applied for admission, but have been solely denied because New West lacks

1 sufficient space to accommodate them.

2 6. Respondent Los Angeles Unified School District is a public school district duly  
3 organized and existing under the laws of the State of California.

4 7. Respondent the Board of Education of the Los Angeles Unified School District is  
5 the LAUSD's elected governing body with authority to govern the District and to ensure that the  
6 District complies with all laws, including Proposition 39.

7 8. Respondent David L. Brewer III is the Superintendent of Schools of the Los  
8 Angeles Unified School District, and as such is its highest administrative officer and shares  
9 responsibility with Respondent the Board of Education of the Los Angeles Unified School  
10 District to ensure that the District complies with all laws, including Proposition 39.  
11 Superintendent Brewer is sued here solely in his official capacity.

12 **JURISDICTION AND VENUE**

13 9. This Court has jurisdiction to issue writs of mandate pursuant to Code of Civil  
14 Procedure section 1085. Petitioner asks the Court to compel LAUSD to act in a manner  
15 consistent with Education Code section 47614 and Implementing Regulations (5 Cal. Code Reg.  
16 11969.1-11969.9), and prohibit LAUSD from arbitrarily and capriciously harming New West  
17 students through its failure to provide New West with legally adequate facilities. Without Court  
18 intervention, LAUSD's failure to comply with Proposition 39 and the Implementing Regulations  
19 will adversely affect New West's ability to operate its charter school and will directly impact its  
20 current and future students who are deprived of the facilities granted to them under the law.

21 10. This action is properly filed in the Superior Court of California, County of Los  
22 Angeles, Central Judicial District, as Los Angeles is the principal place of business for  
23 Respondent LAUSD and the principal place of all events at issue.

24 **GENERAL ALLEGATIONS**

25 **Charter Schools Play an Important Role in the Education of California's Children**

26 11. Public charter schools are an increasingly popular and successful option for  
27 parents of public school students. Charter schools are public schools, and they are given the  
28 autonomy to tailor their educational and operational approaches to meet the needs of their

1 students and community. In exchange for this flexibility, charter schools are held accountable for  
2 producing results. This model that fosters creativity and educational innovation has been  
3 extremely successful for the majority of Los Angeles charter school students who mostly come  
4 from economically disadvantaged and underserved communities.

5 12. The charter schools' approach to education has been objectively shown as highly  
6 successful. The Academic Performance Index (API), which is used by the State of California to  
7 evaluate a school's overall academic performance, reveals that charter schools in LAUSD are  
8 outperforming traditional public schools at the middle and high school levels. At the middle  
9 school level, LAUSD schools had an API of 634, far below the charter schools' median API of  
10 729. New West's most recent API score of 835 is almost 200 points higher than LAUSD's  
11 median scores. Indeed, last year New West was ranked in the top ten percent of similar middle  
12 schools in the state, and was among the highest-performing middle schools in the district.

13 13. Given this success, many parents have endeavored to place their children in the  
14 severely seat-limited charter schools. New West currently has a waiting list of some 400 students  
15 for next school year, out of some 689 applicants for fall 2008. Students are not selected as the  
16 "cream of the crop" but rather are selected by a public random drawing (*i.e.*, lottery) from among  
17 those seeking to attend. Some parents try year after year to get a spot for their children, but  
18 remain on waiting lists due to a lack of facilities space.

19 **LAUSD Has An Obligation To Share Facilities Equitably With New West**

20 14. Recognizing the value of charter schools, California voters passed Proposition 39,  
21 codified at Education Code section 47614, which provides that "[s]tudents in public charter  
22 schools should be entitled to reasonable access to a safe and secure learning environment," and  
23 that public school facilities "should be shared fairly among all public school pupils, including  
24 those in charter schools." (Ed. Code, § 47614(a).)

25 15. Proposition 39 further mandates that "each school district *shall* make  
26 available... facilities sufficient for the charter school to accommodate all of the charter school's  
27 in-district students in conditions reasonably equivalent to those in which the students would be  
28 accommodated if they were attending public schools of the district." (Ed. Code, § 47614(b))

1 (emphasis added).) With the passage of Proposition 39, California's voters explicitly and  
2 formally acknowledged that students attending charter schools are public school students, and  
3 that public school facilities, while operated by school districts, are paid for by state and local  
4 taxpayers for the benefit and service of *all* of California's public school students. As such,  
5 district-operated facilities "shall" be shared among all public school students, including those  
6 who attend charter schools.

7 16. The State Board of Education adopted regulations implementing Proposition 39,  
8 which became operative on August 29, 2002. *See* 5 Cal. Code Regs. §§ 11969.1, *et seq.*<sup>2</sup> These  
9 regulations specify procedures and timelines for Proposition 39 facilities requests from charter  
10 schools. These regulations provide, *inter alia*:

- 11 • Charter schools are required to submit a facilities request to the school district "by  
12 October 1 of the preceding fiscal year." (*See* 5 C.C.R. § 11969.9(b).) The  
13 regulations detail the information that must be provided to the district.
- 14 • "The school district *shall* review the projections and provide the charter school a  
15 reasonable opportunity to respond to any concerns raised by the school district  
16 regarding the projections." (5 C.C.R. § 11969.9(d) (italics added).)
- 17 • "The school district *shall* prepare a preliminary proposal regarding the space to be  
18 allocated to the charter school and the associated pro rata share amount and  
19 provide the charter school a reasonable opportunity to review and comment on the  
20 proposal." (5 C.C.R. § 11969.9(d) (italics added).)
- 21 • "*The school district must provide a final notification of the space offered to the*  
22 *charter school by April 1* preceding the fiscal year for which facilities are  
23 requested. The school district notification must specifically identify: (1) the  
24 teaching station and non-teaching station space offered for the exclusive use of the  
25 charter school and the teaching station and non-teaching station space to be shared  
26 with district-operated programs; (2) for shared space, the arrangements for  
27 sharing; (3) the in-district classroom ADA assumptions for the charter school  
28 upon which the allocation is based and, if the assumptions are different than those  
submitted by the charter school, a written explanation of the reasons for the  
differences; (4) the pro rata share amount; and (5) the payment schedule for the  
pro rata share amount, which shall take into account the timing of revenues from  
the state and from local property taxes." (5 C.C.R. § 11969.9(e) (italics added).)
- The charter school must notify the school district in writing whether or not it  
intends to occupy the offered space. The notification must occur by May 1 or 30  
days after the school district notification, whichever is later. (5 C.C.R. §  
11969.9(i).)

17. On October 1, 2007, New West properly submitted a request for facilities to house

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<sup>2</sup> The State Board of Education recently amended the Proposition 39 implementing  
Regulations which became effective on March 31, 2008; however, these revised regulations do  
not take effect until the 2009/2010 school year facilities allocations.

1 approximately 300 middle school students, as described in its charter, under Education Code  
2 section 47614 for the 2008/2009 school year to LAUSD, thereby satisfying the statute's written  
3 request requirement (a true and correct copy of this request is attached to the Petition as Exhibit  
4 1).

5 18. On March 13, 2008 the District Superintendent David L. Brewer III sent a letter to  
6 all Local District Superintendents and Senior Staff outlining the District's legal obligations under  
7 Proposition 39 and explaining why it settled a recent lawsuit challenging the District's  
8 noncompliance with Proposition 39. In this letter the District Superintendent acknowledged the  
9 District's obligations under the law and stated that: "Where, before the passage of Proposition 39,  
10 the District had a duty under section 47614 only to provide surplus space to charter schools, the  
11 District now has an obligation to share its facilities fairly among all public school pupils,  
12 including those in charter schools..." and "that the law requires the District to treat charter  
13 school students who reside within District boundaries as District students which must be  
14 accommodated within District facilities upon request." This same letter then outlined the  
15 District's procedures for complying with the law which included a detailed analysis of existing  
16 school facilities space, meeting with all levels of District administration including the site  
17 principals to "verify space availability and configuration" with the preliminary matches between  
18 space and charter schools being reviewed and officially approved by the Superintendent for  
19 official offers by April 1, 2008.

20 19. On April 1, 2008 the District sent a letter to New West articulating an offer of  
21 twelve (12) classrooms at the Fairfax High School in which to co-locate the Charter School (a  
22 true and correct copy of this offer letter is attached to the Petition as Exhibit 2), as required under  
23 Proposition 39. This offer violated numerous provisions of Proposition 39 and the Implementing  
24 Regulations including:

- 25 • The District did not "review the [facilities] projections and provide the charter  
26 school a reasonable opportunity to respond to any concerns raised by the school  
27 district regarding the projections" as required by section 11969.9(d) of the  
28 Implementing Regulations;
- The District did not "prepare a preliminary proposal regarding the space to be  
allocated to the charter school and the associated pro rata share amount and  
provide the charter school a reasonable opportunity to review and comment on the  
proposal," as required by section 11969.9(d) of the Implementing Regulations;

- 1 • The District did not determine a “comparison group of school district-operated  
2 schools with similar grade levels” which is the “standard for determining whether  
3 facilities are sufficient to accommodate charter school students in conditions  
4 reasonably equivalent to those in which the students would be accommodated if  
5 they were attending public schools of the school district,” as required by 11969.3  
6 of the Implementing Regulations;
- 7 • The District did not “specifically identify” the teaching stations, the specialized  
8 classrooms (e.g., science, computer labs etc.), nor the non-classroom space (e.g.,  
9 cafeteria, gym, play fields, library, multipurpose room etc.) for the exclusive use  
10 of the charter school or to be shared with the District’s programs as required by  
11 Section 11969.9(e)(1);
- 12 • The District did not “specifically identify” “for shared space, the arrangements for  
13 sharing,” as required by section 11969.9(e)(2) of the Implementing Regulations;
- 14 • The District did not “specifically identify” “the in-district classroom ADA  
15 assumptions for the charter school upon which the allocation is based and, if the  
16 assumptions are different than those submitted by the charter school, a written  
17 explanation of the reasons for the differences,” as required by section  
18 11969.9(e)(3) of the Implementing Regulations;
- 19 • The District included illegal contingencies, including the contingency that the  
20 Charter School must accept a District developed “Use Agreement” as a condition  
21 precedent to occupying the space – this violates section 11969.9(h) of the  
22 Implementing Regulations which requires the parties to “negotiate” an agreement  
23 for the use of the facilities;
- 24 • The District attempted to impose fees on the Charter School that are not allowed  
25 by Proposition 39 and the Implementing Regulations including indicating an intent  
26 to charge the Charter School fees if the Charter School operates its educational  
27 program on a different calendar or bell schedule;
- 28 • The District used its standard loading policy for determining the number of  
classrooms to offer the Charter School in violation of Title 5, California Code of  
Regulations Section 11969.3 which requires that the District to determine (1) the  
Charter School’s comparison group schools; and (2) the ratio of teaching stations  
to Average Daily Attendance (“ADA”) at those schools; and then allocate  
teaching stations to the Charter School according to this ratio.

20. On April 18, 2008 New West sent a letter to the District outlining concerns with the District’s offer of facilities, including the legal deficiencies outlined in paragraph 18 above. The District’s lack of compliance with the law made it impossible for New West to determine if the facilities offered would meet the needs of its educational program. New West received no response from the District to its letter of April 18, 2008.

21. On April 22, 2008, the District arranged a school site visit for New West to the LAUSD’s Fairfax High School campus for the charter school to gather additional details about the District’s offer and to determine if the offer would meet the needs of its educational program.

1 The Charter School administrators were met with hostility by the District administrator at the  
2 site, in addition to two teacher's labor union representatives from United Teachers of Los  
3 Angeles ("UTLA"). During this meeting the Charter School was informed by a District  
4 representative that the District's offer of facilities was now "on hold." The District representative  
5 was unable to explain why the offer was "on hold" or whether the District would issue a new  
6 offer. The Charter School followed up this meeting with two letters to District, both dated April  
7 22, 2008, seeking clarification as to the Charter School's facilities offer and complaining about  
8 the open hostility that the Charter School representatives received during the site visit (true and  
9 correct copies of those letters are attached to the Petition as Exhibit 3).

10 22. On April 28, 2008 New West received an email from the District indicating that  
11 the "hold status was related to determining the configuration of the classes" and that the Charter  
12 School should proceed with acceptance of LAUSD's offer as if nothing had changed.

13 23. On April 24, 2008 the Charter School received a form letter from the District  
14 outlining the fees the District expected to charge for the facilities and provided a sample facilities  
15 use agreement the District expected the Charter School to execute for use of the facilities. This  
16 letter also noted that the Charter School "must accept or reject the Proposition 39 offer made by  
17 LAUSD by May 1, 2008. If LAUSD does not receive an acceptance or rejection from you by  
18 May 1, 2008 the offer will be considered rejected". The District's letter, which evidently was  
19 intended to supplement the District's facilities offer, evidences further violations of Proposition  
20 39 and the Implementing Regulations, including that the District is attempting to charge fees that  
21 are not allowed by Proposition 39 and the Implementing Regulations, including requiring that the  
22 Charter School pay for the District's maintenance and operations personnel in violation of  
23 Education Code section 47614(b)(1) and Section 11969.7.

24 24. On April 30, 2008, having not received any response from the District about the  
25 status of its offer of facilities, nor any response to the three letters sent by the Charter School to  
26 the District, the Charter School formally accepted the District's offer by hand-delivering a notice  
27 of intent to occupy the facilities offered by the District in accordance with Section 11969.9(f).  
28 This letter accepted the District's offer of facilities but made a full reservation of rights to

1 challenge the legal sufficiency of the District's offer (a true and correct copy of the acceptance  
2 and notice of intent to occupy is attached to the Petition as Exhibit 4).

3 25. On April 30, 2008, after the Charter School delivered its notice of intent to occupy  
4 to the District, the Charter School received a one paragraph letter from the District Senior Deputy  
5 Superintendent Ray Cortines "withdrawing the offer made to New West Charter of thirteen  
6 classrooms at Fairfax High School."<sup>3</sup> (A true and correct copy of this letter is attached to the  
7 Petition as Exhibit 5.)

8 26. On May 5, 2008, New West demanded that LAUSD retract its withdrawal and  
9 reinstate the offer. (A true and correct copy of this letter is attached to the Petition as Exhibit 6.)  
10 The LAUSD did not reply to New West's demand.

11 27. On July 1, 2008, New West (through counsel) repeated its demand that LAUSD  
12 provide the facilities required by Proposition 39, and as LAUSD offered on April 1, 2008. (A  
13 true and correct copy of this letter is attached to the Petition as Exhibit 7.)

14 28. On July 9, 2008, the LAUSD responded by confirming that it reneged on its  
15 "Proposition 39 offer to New West Charter", and that it still refuses to provide any facilities for  
16 the coming school year despite the statutory requirement that it do so. (A true and correct copy  
17 of this letter is attached to the Petition as Exhibit 8.)

18 **New West's Students Are Suffering From LAUSD's Refusals**

19 29. These actions by LAUSD exacerbate the existing difficulties that New West faces  
20 at the hands of the District. New West has difficulty building facilities on its own because,  
21 unlike LAUSD-run schools, it cannot directly raise money through property tax assessments,  
22 developer fees, parcel taxes, or bond initiatives. As a result, New West, like all charter schools,  
23 must rely on operating revenue from the state to lease and improve private facilities, which  
24 unnecessarily diverts and depletes funding meant for the instruction of students within the  
25 classroom to cover the costs of facilities. LAUSD further exploits this difficulty by proposing to  
26 charge unconscionably high rates to charter schools for use of district facilities.

27 \_\_\_\_\_  
28 <sup>3</sup> The April 1 offer letter described 12 exclusive use "teaching station" classrooms, and one  
exclusive use "non-teaching" station. The "thirteen classrooms" referred to in LAUSD's April  
30 letter appears to mean the 12 teaching and one non-teaching stations.

1           30. Charter schools without district-provided facilities are also in a difficult position  
2 when forced to use facilities in the commercial real estate market. While LAUSD has the  
3 authority to approve its own facility locations without the need to get local government  
4 approvals, charter schools, when forced to operate solely under their own auspices, are forced to  
5 go through the lengthy and expensive local land use process that is generally applicable to private  
6 parties, but from which school districts' school sites are exempt.

7           31. Compounding this issue, charter schools in the commercial real estate market pay  
8 exorbitant rent for facilities and substantial costs added for code required tenant improvements.  
9 For example, because of LAUSD's failure to comply with its Proposition 39 obligations, New  
10 West will pay close to \$264,000 in rent for a commercial facility this year, and has paid well over  
11 \$750,000 in tenant improvements for its current non-District facility. Under Proposition 39, a  
12 reasonably equivalent facility would have cost New West no more than \$10,000 annually with no  
13 tenant improvement costs, thus allowing New West to put more than \$1 million back in the  
14 classroom where it is needed most. The District's failure to timely provide a facility to New  
15 West has forced New West to enter into an extension of its current lease at a cost of over \$1.5  
16 million to serve only half of the students that would otherwise attend. The majority of  
17 California's charter schools without district facilities lease church or community center facilities,  
18 commercial space, or crowd portable trailers onto any available parking lots. These facilities lack  
19 many traditional school amenities, including cafeterias, libraries, computer and science labs,  
20 wood and metal shops, play fields, multipurpose rooms and gymnasium space that traditional  
21 public schools enjoy.

22           32. In recent years, LAUSD has obtained access to billions of dollars of bond funds  
23 from local bond measures K, R, and Y for the renovation, modernization, construction and  
24 expansion of district facilities. Of that vast sum, some was earmarked as a minimum for LAUSD  
25 to use to meet its obligations to provide facilities to charter schools, of which approximately \$80  
26 million still sits idle because LAUSD refuses to use available funds to provide facilities to charter  
27 schools. These funds were not intended by the voters to be hoarded by LAUSD – these funds  
28 were intended to help charter schools like New West, and to assist LAUSD to meet its

1 obligations under Proposition 39.

2 33. LAUSD appears to incorrectly believe that it can just say “no” to a charter  
3 school’s request for facilities under Proposition 39, and that LAUSD possess unchecked  
4 discretionary power to determine when, how, and under what circumstances LAUSD will make  
5 facilities available to charter schools. Proposition 39 and the Implementing Regulations do not  
6 give this discretionary power to LAUSD. To the contrary, Proposition 39 *requires* LAUSD to  
7 provide charter schools with reasonably equivalent public facilities. The State Board of  
8 Education Final Statement of Reasons, in developing the Implementing Regulations, makes clear  
9 that a district must take some affirmative action to create facilities capacity even if there is no  
10 excess space available in its current configuration.

11 34. Specifically, in contravention of Proposition 39’s mandate to share all public  
12 school facilities equitably, in the memoranda LAUSD removes certain facilities from Proposition  
13 39 consideration by adopting biased factors, including:

- 14 • Not having teachers travel between classrooms at a school site, even when that  
15 means public school students in charter schools will have no facilities at all;
- 16 • Maintaining a “prudent reserve” for hypothetical future students over a five year  
17 projection at all district-run schools, even when that means public school students  
18 in charter schools will have no facilities at all;
- 19 • Avoiding relocation of any student at district-run schools, even when that means  
20 public school students in charter schools will have no facilities at all;
- 21 • Avoiding the conversion of district-run campuses to a year-round calendar in  
22 order to create additional capacity, even when that means public school students in  
23 charter schools will have no facilities at all;
- 24 • Avoiding making any change whatsoever to any district-run school’s “function on  
25 the site,” even when that means public school students in charter schools will have  
26 no facilities at all;
- 27 • Avoiding making any change whatsoever to any district-run school’s  
28 “pedagogical, programmatic, logistical, or financial priorities or plans,” even  
when that means public school students in charter schools will have no facilities at  
all; and
- Avoiding making any change whatsoever to any district-run school’s “planned  
calendar or configuration changes,” even when that means public school students  
in charter schools will have no facilities at all.

35. It is impossible for LAUSD to reconcile its deliberate evasion of its duties with the  
legal mandate “that public school facilities should be shared fairly among all public school

1 pupils, *including those in charter schools*” (Ed. Code, § 47614(a) emphasis added), and that  
2 “[e]ach school district *shall make available*, to each charter school operating in the school  
3 district, facilities sufficient for the charter school to accommodate all of the charter school’s in-  
4 district students in *conditions reasonably equivalent* to those in which the students would be  
5 accommodated if they were attending other public schools of the district.” (*Id.* at (b) (emphasis  
6 added).) In the end, LAUSD’s policies and practices show a deeply-rooted institutional bias that  
7 conflict with Proposition 39’s mandate.

8 **FIRST CAUSE OF ACTION**

9 **(WRIT OF MANDATE)**

10 36. Petitioner re-alleges and incorporates by reference each and every allegation  
11 contained in paragraphs 1 through 35, inclusive.

12 37. Code of Civil Procedure section 1085, subdivision (a), authorizes a court to issue a  
13 writ to any inferior tribunal, corporation, board, or person “to compel the performance of an act  
14 which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel  
15 the admission of a party to the use and enjoyment of a right ... to which the party is entitled”,  
16 where “the petitioner has no plain, speedy and adequate alternative remedy, the respondent has a  
17 clear, present and usually ministerial duty to perform, and the petitioner has a clear, present and  
18 beneficial right to performance.”

19 38. At all relevant times, LAUSD had a mandatory, non-discretionary, and ministerial  
20 duty under Education Code section 47614(b) to provide New West with facilities “reasonably  
21 equivalent” to those of other public schools in LAUSD, and New West had a right to those  
22 facilities. (Ed. Code, § 47614(b).)

23 39. In breaching its mandatory duty to provide New West charter school students with  
24 reasonably equivalent facilities available to students attending district-run public schools,  
25 LAUSD ignored its statutory obligation under Education Code section 47614(b).

26 40. At all times relevant herein, LAUSD had a mandatory and non-discretionary duty  
27 under Proposition 39 and the implementing regulations, to, among other things:  
28

1  
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- “Review the [facilities] projections and provide the charter school a reasonable opportunity to respond to any concerns raised by the school district regarding the projections” as required by section 11969.9(d) of the Implementing Regulations
- “Prepare a preliminary proposal regarding the space to be allocated to the charter school and the associated pro rata share amount and provide the charter school a reasonable opportunity to review and comment on the proposal,” as required by section 11969.9(d) of the Implementing Regulations;
- Determine a “comparison group of school district-operated schools with similar grade levels” which is the “standard for determining whether facilities are sufficient to accommodate charter school students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending public schools of the school district,” as required by 11969.3 of the Implementing Regulations;
- “Provide a final notification of the space offered to the charter school by April 1,” as required by section 11969.9(e) of the Implementing Regulations because its April 1, 2008 offer was the first formal written offer to be received by the Charter School and it did not identify whether it was a preliminary or final offer;
- “Specifically identify” the teaching stations, the specialized classrooms (e.g., science, computer labs etc.), nor the non-classroom space (e.g., cafeteria, gym, playfields, library, multipurpose room etc.) for the exclusive use of the charter school or to be shared with the District’s programs as required by Section 11969.9(e)(1);
- “Specifically identify” “for shared space, the arrangements for sharing,” as required by section 11969.9(e)(2) of the Implementing Regulations;
- “Specifically identify” “the in-district classroom ADA assumptions for the charter school upon which the allocation is based and, if the assumptions are different than those submitted by the charter school, a written explanation of the reasons for the differences,” as required by section 11969.9(e)(3) of the Implementing Regulations;
- Not include illegal contingencies, including the contingency that the Charter School must accept a District developed “Use Agreement” as a condition precedent to occupying the space – this violates section 11969.9(h) of the Implementing Regulations which requires the parties to “negotiate” an agreement for the use of the facilities;
- Not impose fees on the Charter School that are not allowed by Proposition 39 and the Implementing Regulations including indicating an intent to charge the Charter School fees if the Charter School operates its educational program on a different calendar or bell schedule than the District or charging fees for maintenance and operations.

41. The District used its standard loading policy for determining the number of classrooms to offer New West in violation of Title 5, California Code of Regulations Section 11969.3 which requires that the District to determine (1) the Charter School’s comparison group schools; and (2) the ratio of teaching stations to Average Daily Attendance (“ADA”) at those

1 schools; and then allocate teaching stations to the Charter School according to this ratio.

2 42. At all times mentioned herein, LAUSD has had and continues to have, the ability  
3 to perform its legal duties, including its duties under Education Code section 47614 and  
4 California Code of Regulations sections 11969.1 through section 11969.9, but has refused to do  
5 so.

6 43. Unless and until LAUSD is compelled to follow the law, New West's current and  
7 prospective students will be deprived of their statutory and regulatory rights, because New West  
8 will be forced to conduct its educational program in facilities that are too small to accommodate  
9 its current and prospective District students who would otherwise choose to attend New West,  
10 which will be forced to operate in facilities that are *not* reasonably equivalent to those provided to  
11 district-run schools, and will be obligated to do so *at substantial additional expense* in  
12 commercially-rented space. Further, absent an order enforcing these critical requirements for  
13 public school facilities allocation, New West and the general public will be deprived of critical  
14 statutory rights.

15 44. Petitioner has performed any and all conditions precedent to filing this action and  
16 has exhausted any and all available administrative remedies.

17 45. Petitioner lacks a plain, speedy, and adequate remedy at law, except by way of  
18 peremptory writ of mandate pursuant to Code of Civil Procedure section 1085.

19 46. Without relief from this Court, Petitioner is being, and will continue to be,  
20 irreparably harmed by LAUSD's failure to perform its legal duties. LAUSD's actions and  
21 failures to act will continue to harm New West's charter school students by forcing them into  
22 small, costly, and not reasonably equivalent facilities that lack the necessary space to operate a  
23 middle school educational program.

24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, Petitioner prays for judgment on this Petition as follows:

26 1. That this Court issue a peremptory writ of mandate commanding LAUSD, and all  
27 those acting in concert with it:

28

1 (a) to honor the facility offer to New West dated April 1, 2008 and correct its  
2 deficiencies, or in the alternative to immediately provide a "reasonably equivalent" facilities offer  
3 to New West for the 2008/09 school year in full compliance with the law, and provide such  
4 corrective and supplemental assistance as will enable New West to utilize such space for the start  
5 of the school year;

6 (b) to refrain from taking any action that will prevent or impair the District's ability to  
7 provide facilities as outlined in its April 1, 2008 offer to New West during the 2008/2009 school  
8 year; and

9 (c) to pay, as damages pursuant to Code of Civil Procedure section 1095, an amount  
10 sufficient to offset the commercial rent New West will pay for the 2008-2009 school year for  
11 non-district school facilities, so that New West incurs, in aggregate, no more in total occupancy  
12 expenses than it would otherwise be entitled to pay for adequate facilities for the 300 students it  
13 will enroll if the facilities offered by LAUSD are provided, calculated in accordance with the  
14 requirements of Proposition 39 for this same period; and

15 (d) to hereafter comply fully with Proposition 39 and the Implementing Regulations  
16 as to New West.

17 2. For the Court to exercise continuing jurisdiction over this action to ensure that  
18 LAUSD complies with the writ of mandate of this Court;

19 3. For the recovery in full of Petitioner's costs and attorneys' fees incurred in this  
20 action under Code of Civil Procedure section 1021.5; and

21 4. Such other relief as the Court may find appropriate.

22 DATED: July 18, 2008

23 PROCOPIO, CORY, HARGREAVES &  
24 SAVITCH LLP

25 By: 

26 John C. Lemmo  
27 Attorneys for Petitioner and Plaintiff  
28 New West Charter Middle School

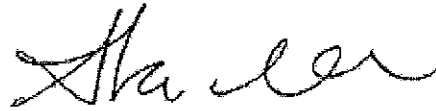
VERIFICATION

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I, Sharon Weir, am the Principal of New West Charter School, a party to this action, and I am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing Verified Petition for Writ of Mandate and know its contents. Based upon personal knowledge, I allege that the matters stated therein are true.

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

Executed this 18th day of July, 2008 at Glasgow, Scotland.



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Sharon Weir