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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

NEWHALL SCHOOL DISTRICT,

Plaintiff and Appellant,

v.

ACTON-AGUA DULCE UNIFIED  
SCHOOL DISTRICT et al.,

Defendants and Respondents;

AEALAS,

Real Party in Interest  
and Respondent.

B267856

(Los Angeles County  
Super. Ct. No. BS149061)

APPEAL from an order of the Superior Court of  
Los Angeles County, James C. Chalfant, Judge. Affirmed.

Dannis Woliver Kelley, Sue Ann Salmon Evans and Karl H.  
Widdell for Plaintiff and Appellant.

Girard & Edwards, Heather M. Edwards and Eric E. Stevens for Defendant and Respondent Acton-Agua Dulce Unified School District.

Law Office of Jennifer McQuarrie and Jennifer McQuarrie for Real Party in Interest and Respondent.

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## INTRODUCTION

In the underlying proceeding, the trial court granted Newhall School District's (Newhall) writ petition, in part, by vacating Acton-Agua Dulce Unified School District's (Acton) approval under the Charter Schools Act of 1992 (Ed. Code, § 47600 et seq. (the Charter Schools Act)) of a charter school to be located in Newhall's jurisdiction, but denying Newhall's request to void the charter *ab initio*. The court remanded the matter to Acton to hold a new hearing to make the pertinent findings under Education Code section 47605, on the record, without improperly considering financial gain as a factor. Acton held a new hearing and approved a new charter school, again to be located in Newhall.

Newhall appeals from the denial of its motion for an award of attorney fees under the private attorney general statute (Code Civ. Proc., § 1021.5).<sup>1</sup> We conclude that the trial court did not abuse its discretion. This lawsuit neither resulted in the enforcement of an important right affecting the public interest, nor conferred a significant benefit on the general public or a large class of persons within the meaning of section 1021.5. Accordingly, the order is affirmed.

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<sup>1</sup> All further statutory references are to the Code of Civil Procedure, unless otherwise noted.

## FACTUAL AND PROCEDURAL BACKGROUND

### 1. *The charter school*

The Charter Schools Act generally requires that charter schools be located within the districts or counties where they are chartered. (Ed. Code, § 47605, subd. (a)(1).) That Act allows a charter school that is unable to locate within the jurisdiction of the chartering school-district to establish one site in the geographic boundaries of another school district that lies within the same county, provided that the chartering district notifies the receiving district in advance of approving the charter petition, and either the school has unsuccessfully attempted to locate a single site in the home district or a temporary site is needed during construction or expansion of the site in the home district. (*Id.*, subd. (a)(1) & (5).)<sup>2</sup>

In May 2013, Acton approved the petition brought by AEALAS, known as Albert Einstein Academy for Letters, Arts

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<sup>2</sup> Education Code section 47605 reads in relevant part: “A charter school that is unable to locate within the jurisdiction of the chartering school district may establish one site outside the boundaries of the school district, but within the county in which that school district is located, if the school district within the jurisdiction of which the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools and the Superintendent are notified of the location of the charter school before it commences operations, and either of the following circumstances exists: [¶] (A) The school has attempted to locate a single site or facility to house the entire program, but a site or facility is unavailable in the area in which the school chooses to locate. [¶] (B) The site is needed for temporary use during a construction or expansion project.” (*Id.*, subd. (a)(5).)

and Sciences, Incorporated (the Academy), for a charter school called AEA-SCV. Acton granted AEA-SCV use of a campus in Acton for one year only because the building required renovation. The Academy found a new site in Newhall for the academic year 2014-2015 and sought a material revision of its charter addressing the new location. Acton approved the material revision in June 2014.<sup>3</sup>

## *2. Newhall's writ petition*

Newhall brought its operative writ petition seeking (1) a declaration that Acton's approval of the Academy's charter violated the Charter Schools Act; (2) a writ directing Acton to set aside and revoke the charter approval as void; (3) a writ prohibiting Acton from "engaging in fiscal mismanagement"; and (4) an injunction precluding Acton from operating a charter school outside of its boundaries. The petition alleged that Acton violated its statutory duty to deny the Academy's charter petition because Acton failed to (1) ensure that the Academy identified a location within Acton; (2) ensure that Newhall was given statutory notice; and (3) make the necessary finding that the Academy could not locate within Acton's boundaries, all as required by Education Code sections 47605.1 and 47605, subdivision (a)(1) and (5).<sup>4</sup>

Newhall also alleged that the enumerated violations of Education Code section 47605 were part of a scheme by Acton to

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<sup>3</sup> These facts were taken from our order dismissing a previous appeal in this case.

<sup>4</sup> Education Code section 47605.1, subdivision (d) repeats the provisions of subdivision (a)(5) of section 47605.

address its budget problems by obtaining oversight fees and other payments from the 14 charter schools that Acton authorized but placed outside its own boundaries and by increasing average daily attendance (ADA) revenue. ADA funding, paid to school districts by the State, is calculated based on pupils' classroom attendance. (Ed. Code, § 41601.) Newhall sought damages to compensate it for the ADA funds it lost to Acton and AEA-SCV.

The pleading also asserted that many of the charter petitions authorized by Acton were for schools that had been rejected or were investigated by other school districts for failure to comply with various legal requirements for inclusivity and serving English language learners. The Academy's charter petition, Newhall alleged, had been repeatedly rejected by four other educational agencies, including Saugus Union School District (which rejected the charter petition four times), Ventura Unified School District, Moorpark Unified School District, and the Los Angeles County Office of Education.

### 3. *The trial court's ruling*

The trial court granted Newhall's petition in part. The court explained that Acton's decision to approve the Academy's charter was quasi-legislative. (*California School Bds. Assn. v. State Bd. of Education* (2010) 186 Cal.App.4th 1298, 1314, fn. 12 (*School Boards*).) Although factual findings are not required by the Education Code when a school district grants or approves a charter petition, a public record is necessary to allow judicial review of quasi-legislative decisions and determination whether the chartering district has considered all relevant factors and demonstrated a rational connection between those factors, the choice made, and the purposes of the Charter Schools Act. (See *Western States Petroleum Assn. v. Superior Court* (1995) 9

Cal.4th 559, 577 (*Western States*).) The record, the court found, contained substantial evidence supporting Acton's approval of the Academy's petition in that the record showed that (1) the Academy was unable to locate a single site in Acton's boundaries in which to house its entire program, and (2) the Academy's notification to Newhall before approval of the charter's material revision in June 2014 satisfied the timing requirements in Education Code sections 47605, subdivision (a)(5) and 47605.1, subdivision (d). However, the court ruled, Acton had failed to make written or oral findings of these facts.<sup>5</sup>

As for the fundraising stratagem alleged by Newhall, the trial court stated, "[r]evenue generation by authorizing out-of-district charter schools is not within the purpose and scope of the [Act]. . . . It is the charter school's needs, not the district's needs, which govern out-of-district placement. Acton-Agua misunderstood this purpose in creating a plan to recruit charter schools for out-of-district placement, and specifically in approving the charter for AEA-SCV on May 16."

Accordingly, the trial court granted Newhall's request to vacate Acton's approval of the Academy's charter petition. The court declined to preclude Acton from approving AEA-SCV's charter, or any other charter, to locate a school outside of Action's boundaries. Instead, the court remanded the matter to Acton for a new approval hearing that applied the Education Code section 47605 criteria properly, without considering funding recovery,

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<sup>5</sup> The court also ruled that the Academy later violated the Charter Schools Act by attempting to create an independent study, non-classroom, meeting space within Newhall's boundaries.

and that demonstrated a rational connection between the relevant factors, the decision, and the purpose of the Act.

The trial court also denied Newhall's request to enjoin the Academy from operating AEA-SCV in Newhall while Acton conducted a new approval process. The court reasoned that an injunction would disrupt students and teachers mid school-year while conferring little benefit on Newhall. The court denied as moot Newhall's request to revoke AEA-SCV's charter.

The trial court set an order to show cause for February 5, 2015, to review Acton's new approval process and to determine whether the statutory criteria were properly applied. Newhall brought its first appeal at the end of 2014 (Case No. B260731).

On February 2, 2015, Acton and the Academy filed a joint statement that they complied with the trial court's remand order by submitting and approving a petition to create a new charter school to be named Albert Einstein Academy for Letters, Arts and Sciences – Science, Technology, Engineering, Arts, and Mathematics (STEAM). The trial court declined to take any further action on the ground that Newhall's appeal divested it of jurisdiction.

#### *4. The first appeal*

We dismissed Newhall's first appeal as moot. We observed that Acton held a new hearing and authorized a new charter school petition for STEAM to replace AEA-SCV that would commence operation in the 2015-2016 academic year. Newhall's appeal sought to close AEA-SCV, a school that no longer existed, and so there was no actual controversy and no relief we could give Newhall.

### 5. *The attorney fee motion*

Returning to the trial court, Newhall sought \$211,902 in attorney fees and \$14,000 in costs as a private attorney general. (§ 1021.5.) Although the trial court ruled that Newhall was the successful party, it denied Newhall's motion finding that Newhall did not meet any of the statutory factors justifying a fee award. (§ 1021.5.) Newhall's appeal followed.

## CONTENTIONS

Newhall contends that the trial court erred in denying its attorney fee motion.

## DISCUSSION

### 1. *Section 1021.5 and the standard of review*

“Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in [(1)] the enforcement of an important right affecting the public interest if: [(2)] a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, [(3)] the necessity and financial burden of private enforcement . . . are such as to make the award appropriate, and [(4)] such fees should not in the interest of justice be paid out of the recovery, if any.” (§ 1021.5.)

“‘Because the statute states the criteria in the conjunctive, each must be satisfied to justify a fee award.’ [Citation.]” (*McGuigan v. City of San Diego* (2010) 183 Cal.App.4th 610, 623; *New West Charter Middle School v. Los Angeles Unified School Dist.* (2010) 187 Cal.App.4th 831, 848-849 (*New West Charter*).) The absence of any one of these elements defeats a claim for attorney fees.



A trial court ruling on a section 1021.5 fee request exercises “ ‘ “its traditional equitable discretion.’ ” ’ [Citation.]” (*McGuigan v. City of San Diego, supra*, 183 Cal.App.4th at p. 623.) The court “ ‘ “must realistically assess the litigation and determine, from a practical perspective” [citation] whether or not the statutory criteria have been met.’ [Citations.]” (*County of Colusa v. California Wildlife Conservation Bd.* (2006) 145 Cal.App.4th 637, 647-648 (*County of Colusa*).)

“ ‘The decision whether the claimant has met his burden of proving each of these prerequisites and is thus entitled to an award of attorney fees under . . . section 1021.5 rests within the sound discretion of the trial court and that discretion shall not be disturbed on appeal absent a clear abuse’ ” (*New West Charter, supra*, 187 Cal.App.4th at pp. 848-849, fn. omitted) “ ‘amounting to a manifest miscarriage of justice.’ ” (*Phipps v. Saddleback Valley Unified School Dist.* (1988) 204 Cal.App.3d 1110, 1123.)

2. *Newhall did not meet the first two factors of section 1021.5.*

In determining the importance of the public right at issue, the first factor, “courts should generally realistically assess the significance of [the] right [vindicated] in terms of its relationship to the achievement of fundamental legislative goals. [Citation.]” (*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 936 (*Woodland Hills*).) Section 1021.5 is applied when both constitutional and statutory rights have been vindicated. (*Id.* at p. 935) Not all statutory rights however, are of sufficient importance to justify section 1021.5 fees. (*Ibid.*) Trial courts must “exercise judgment in attempting to ascertain the ‘strength’ or ‘societal importance’ of the right involved.” (*Ibid.*)

Here, the trial court determined that Newhall's lawsuit was about control over Newhall's students and money by preventing a competitor from operating a school within Newhall's borders. It described this litigation as simply a " 'turf battle' between two school districts over which decides to charter a school." The court observed that it set aside the AEA-SCV charter but it also permitted Acton to re-evaluate a charter petition by making the proper findings, without its revenue-generating motive.

The trial court's characterization of this proceeding was clearly correct. The ruling granted Newhall's writ petition but only in part. Newhall sought to permanently block Acton from chartering a school within Newhall's boundaries. But, it did not succeed because the trial court refused to vacate the charter *ab initio*. The writ of mandate here simply meant that Acton could hold another hearing on a petition to charter a school to be located in Newhall. The outcome of the writ proceeding was the placement of a new school chartered by Acton right back in Newhall's boundaries after Acton followed the statutory requirements. The ruling vindicated only Newhall's effort to ensure that the proper findings concerning the Academy's charter petition were made on the record and that Acton was not motivated by the desire to seize Newhall's ADA funds. Stated otherwise, all that Newhall garnered "was a limited 'do-over,' " which is not a significant public achievement. (*Center for Biological Diversity v. California Fish & Game Com.* (2011) 195 Cal.App.4th 128, 141 [holding § 1021.5 fees were unjustified where action succeeded only in requiring a second hearing].)

The fact that the trial court ruled that revenue-generation was not a consideration under Education Code section 47605,

subdivision (a)(5) does not make the rights at issue more important. That portion of the judgment was merely incidental to Newhall’s own interests in the matter, namely to prevent the Acton-approved charter school from opening in Newhall. (*Bell v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672, 691.) “[T]he proper application of statutory language . . . is an important right. Furthermore, it has been said that ‘the public always has a significant interest in seeing that legal strictures are properly enforced . . . .’ [Citation.] This does not mean, however, that the private attorney general doctrine was designed to reward plaintiffs who, in pursuit of their own interests, just happened to bring about the enforcement of a statute that benefits the public. [Citation.]” (*Norberg v. California Coastal Com.* (2013) 221 Cal.App.4th 535, 541.) It is clear that Newhall brought this writ proceeding, not to force Acton to correct the possible misapprehension of law that was the subject of the trial court’s writ (*Center for Biological Diversity v. California Fish & Game Com.*, *supra*, 195 Cal.App.4th at p. 141), but to preclude Acton altogether from chartering the Academy’s school in Newhall and taking Newhall’s ADA revenue.<sup>6</sup> The trial court did not abuse its discretion in ruling that this lawsuit was little more

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<sup>6</sup> Newhall characterizes its writ proceeding differently. It argues it was *not* motivated by ADA funding, but by the fact that it and other school districts found that the Academy had failed to meet other provisions of the Charter Schools Act for inclusivity and serving English language learners. But, as Newhall’s reply brief’s factual chronology makes clear, Acton’s funding motive was a central issue for Newhall. Moreover, the trial court never reached the question of AEA-SCV’s compliance with any provision of the Charter Schools Act other than the Education Code sections involving out-of-district placement.

than a parochial fight between these two school districts over the placement of AEA-SCV within Newhall's boundaries.

Newhall counters that its litigation enforced the public's important right to halt illegal conduct in the public school system and bring the actions of school officials into compliance with the law. Newhall's argument works thusly: Protecting the public school system in California is important (*Slayton v. Pomona Unified School Dist.* (1984) 161 Cal.App.3d 538, 547 ["'education is a fundamental interest' of the students of this state"], quoting from *Serrano v. Priest* (1976) 18 Cal.3d 728, 766), and the Legislature's goal in enacting certain Education Code provisions was "to safeguard the constitutional and statutory right of California children to a free education." (*Slayton*, at p. 550, citing Ed. Code, § 48200 [Compulsory Education Law].) Newhall posits that lawsuits seeking "'proper governance'" generally vindicate all important public rights. (*Choi v. Orange County Great Park Corp.* (2009) 175 Cal.App.4th 524, 531 [involving the search for CEO of a public park].) Finally, Newhall quotes from *School Boards*, *supra*, 186 Cal.App.4th 1298 that "[t]he chartering of a school and the charter school's compliance with the law, the regulations, and the conditions imposed on its charter *can be* matters of serious concern to the public and to our public school system." (*Id.* at p. 1326, italics added.)<sup>7</sup>

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<sup>7</sup> Important public rights include, for example, racial discrimination, the rights of mental patients, legislative reapportionment, and environmental protection. (See *Woodland Hills*, *supra*, 23 Cal.3d at pp. 935-936 & fns. 8-11.) Although "[l]itigation which enforces constitutional rights necessarily affects the public interest and confers a significant benefit upon the general public" (*City of Fresno v. Press Communications, Inc.* (1994) 31 Cal.App.4th 32, 44, citing *Press v. Lucky Stores, Inc.*

We recognize that education is a fundamental interest, that charter schools' compliance with the law can be a serious public concern, and safeguarding proper governance may rise to the level of "an important right affecting the public interest." (§ 1021.5.) Newhall's invocation of these grand principles overstates the importance of the interests involved, however. The trial court here simply found a violation of a long-held common-law procedural doctrine in quasi-legislative actions that requires that decisions be made on the record (see *Western States, supra*, 9 Cal.4th at p. 575) – having already determined that substantial evidence existed supporting Acton's decision – and the consideration of an improper factor under the Education Code section 47605 *in this case*. The trial court specifically rejected Newhall's argument that Acton's failure to notify Newhall according to the Charter Schools Act was a due process violation, noting that due process does not apply to quasi-legislative actions. (*Calvert v. County of Yuba* (2006) 145 Cal.App.4th 613, 622-623.) Indeed, the court found Newhall was given adequate notice under the Act. There were simply no fundamental ramifications here.

Turning to the second factor of section 1021.5, the trial court did not abuse its discretion in ruling that its partial grant

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(1983) 34 Cal.3d 311, 318), Newhall's proceeding enforced neither a constitutional right nor an important statutory right. Newhall's reliance on *Slayton v. Pomona Unified School Dist.*, *supra*, 161 Cal.App.3d 538, is unavailing. *Slayton* concerned the school's violation of various Education Code provisions completely unrelated to the Education Code provisions at issue here and moreover, the trial court in *Slayton* found the defendants had abridged the United States and California Constitutions, a violation not remotely at issue here. (*Id.* at pp. 542-543 & 547.)

of the petition for writ of mandate under the circumscribed factual circumstances did not confer a sufficiently “significant benefit” on “a large class of persons” to justify recovery of attorney fees. (§ 1021.5.)

In discussing this second factor, our Supreme Court in *Woodland Hills* explained that “the public always derives a ‘benefit’ when illegal private or public conduct is rectified. Both the statutory language (*‘significant benefit’*) and prior case law, however, indicate that the Legislature did not intend to authorize an award of attorney fees in every case involving a statutory violation. We believe rather that the Legislature contemplated that in adjudicating a motion for attorney fees under section 1021.5, a trial court would determine the significance of the benefit, as well as the size of the class receiving [the] benefit, from a realistic assessment, in light of all the pertinent circumstances, of the gains which have resulted in a particular case.” (23 Cal.3d at pp. 939-940.)

When the party seeking attorney fees is a public entity, “the pertinent question is whether the public entity deserves a reward for pursuing litigation that was in the interest of a *greater spectrum of the public than its own constituents*.” (*People ex rel. Brown v. Tehama County Bd. of Supervisors* (2007) 149 Cal.App.4th 422, 456, italics added.)

Here, Newhall’s writ proceeding did not vindicate the general right of school districts to prevent other districts from placing charter schools in their own boundaries. Education Code section 47605 authorizes such out-of-district placement of charter schools. Nor was this a “‘test case’” on whether section 47605, subdivision (a)(5) was constitutional or enforceable. (*New West Charter, supra*, 187 Cal.App.4th at p. 850.) The proceeding here

“in no way represents, for example, a ringing declaration of the rights of all or most [school districts].” (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 167.) At most, the judgment affected the constituents of Newhall.<sup>8&9</sup> We simply cannot say that this writ of mandate conferred a benefit on the people of California or even a large class of persons, Newhall’s contention to the contrary notwithstanding.

As the consequence of our holding, we need not address the remaining section 1021.5 factors. We hold that Newhall is not entitled to attorney fees under section 1021.5.

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<sup>8</sup> *Bowman v. City of Berkeley* (2005) 131 Cal.App.4th 173, on which Newhall relies is distinguished as it involved a due process violation in that the petitioners had not received a fair hearing. (*Id.* at pp. 175-176.) But, there is no due process right in quasi-legislative decisions, such as approving a charter petition under the Charter Schools Act. (*Calvert v. County of Yuba, supra*, 145 Cal.App.4th at pp. 622-623.)

<sup>9</sup> Newhall’s proceeding tangentially affected two other school districts in the related cases of *Los Angeles Unified School District v. Acton-Agua et al.* (Super. Ct. L.A. County, No. BS149062) and *Pasadena Unified School District v. Acton-Agua et al.* (Super. Ct. L.A. County, No. BS150159), because the trial court here ordered those parties to meet and confer to determine *whether* they could incorporate the findings here into those cases. But, as the court acknowledged, at most the ruling here had an impact only on those two districts’ *lawsuits*; it had no effect on those districts’ constituents.

### **DISPOSITION**

The order is affirmed. Each party to bear its own costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

DHANIDINA, J.\*

WE CONCUR:

EDMON, P. J.

LAVIN, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.