SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

HRG DATE / TIME	**July 2, 2021 / 9:00 A.M.**	**DEPT. NO.**	**17**
JUDGE	**James P. Arguelles**	**CLERK**	**Slort**

OLENA REYES, by and through her guardian ad litem, Samantha Gomez, *et al.*, **Plaintiffs and Petitioners,** **v.** **STATE OF CALIFORNIA; GAVIN NEWSOM, in his official capacity as Governor of the State of California; TONY THURMOND, in his official capacity as State Superintendent of Public Instruction; and CALIFORNIA DEPARTMENT OF EDUCATION, an agency of the State of California,** **Defendants and Respondents.**	**Case No.: 34-2020-80003489** *[Related Case No. 34-2020-80003436]*

Nature of Proceedings:	**Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief – Final Ruling**

The petition for writ of mandate is DENIED.

The Charter Schools Act (CSA) does not confer upon nonclassroom-based charter schools contractual rights to public funding based on current-year average daily attendance. The balance of the complaint for declaratory and injunctive relief is DISMISSED.

The parties' requests for judicial notice of official records are GRANTED. Petitioners' request for judicial notice of the existence of materials published on public agencies' websites is GRANTED. Petitioners' further request of judicial notice of media articles is DENIED. The articles are irrelevant.

Respondents' objections to the Hart Declaration are SUSTAINED.

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Overview

The petitioners and complainants in this case (collectively "Petitioners") are nonprofit corporations that operate nonclassroom-based (NCB) public charter schools; a class of NCB charter schools;[1] and students who are either enrolled or waitlisted at some of these NCB charter schools. NCB instruction is defined as schooling that does not meet the definition of "classroom-based instruction," where classroom-based instruction "occurs only when charter school pupils are engaged in educational activities required of those pupils and are under the immediate supervision and control of an employee of the charter school who possesses a valid certification document registered as required by law." (Educ. Code § 47612.5(e)(1).)[2]

Petitioners challenge recent amendments to the Education Code. The amendments dictated funding of public schools during the 2020-21 fiscal year only.

By way of background, Article IX, Section 5 of the California Constitution charges the Legislature to "provide for a system of common schools by which a free school shall be kept up and supported in each district[.]" California has long provided public primary and secondary education through a system of public school districts. (See *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 243.) Under Article IX, Section 6 of the California Constitution, the Legislature must annually apportion funds to school districts "not less than one hundred twenty dollars ($120) per pupil in average daily attendance in the district during the next preceding fiscal year[.]" The total amount apportioned to any school district annually must equal at least than $2,400. (Cal. Const., Art. IX, § 6.) By statute, however, the Legislature has apportioned funds at much higher rates. (See, e.g., § 42238.02(d) [directing the State Superintendent of Public Instruction to compute base grants by multiplying average daily attendance by an amount between $6,845 and $8,229, and then adjusting for inflation].) The several constitutional and statutory provisions that govern apportionments are quite complex. Average daily attendance (sometimes "ADA") is a key determinant of funding.

Enacted in 1992, the CSA authorizes private entities and individuals to run primary and secondary schools that are publicly funded. (See § 47600 *et seq.*) "The Legislature intended its authorization of charter schools to improve public education by promoting innovation, choice, accountability, and competition." (*Today's Fresh Start, Inc. v. Los Angeles County Office of Educ.* (2011) 57 Cal.4th 197, 205-206.) "Charter schools are initiated by submitting a petition to the chartering authority, generally the governing board of a public school district but occasionally a county board or the State Board of Education." (*Id.*, p. 206.) Once approved, charter schools operate independently but are subject to public oversight. (See *id.*) A charter school "must

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[1] On March 11, 2021, the court certified a class of "all charter schools authorized in California to operate in the 2020-21 school year that were classified as non-classroom-based pursuant to Education Code Section 47612.5 as of the 2019-20 second principal apportionment certification."

[2] Undesignated statutory references shall be to the Education Code.

comply with the CSA, specified statutes, and the terms of its charter, but is otherwise exempt from the laws governing school districts." (*Knapp v. Palisades Charter High School* (2007) 146 Cal.App.4th 708, 715.)

"[C]harter schools fiscally are part of the public school system; they are eligible equally with other public schools for a share of state and local education funding." (*Today's Fresh Start*, p. 206.) Like other public schools, charter schools are funded according to ADA. (See *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1186 and fn. 24; see also § 47612(c) [charter schools are deemed "school districts" for purposes of several statutory sections affecting funding of public schools].) Charter schools' ADA is adjusted intermittently to account for changes in enrollment.

In response to the COVID-19 pandemic, the Legislature passed two bills that revised ADA determinations for the 2020-21 fiscal year only. Senate Bill (SB) 98 took effect on June 29, 2020, and SB 820 took effect on September 18, 2020. Among other things, SB 98 directed the State Superintendent of Public Instruction, "for purposes of any calculations that would use average daily attendance ... [to] use the local educational agency's[3] average daily attendance in the 2019-20 school year in place of its average daily attendance in the 2020-21 school year." (§ 43502(g); see also § 43502(b) ["[F]or purposes of calculating apportionments for the 2020-21 fiscal year for a local educational agency ... the department shall use the average daily attendance in the 2019-20 fiscal year reported for both the second period and the annual period apportionment that included all full school months from July 1, 2019, to February 29, 2020, inclusive"].) Hence, certain apportionments in 2020-21 did not reflect changes in ADA occurring during that fiscal year.

SB 98 also amended Section 14041.6 to defer certain payments to public schools. (See Pet., ¶ 109 ["[T]he State is also deferring approximately 36% of the funding the State would otherwise provide each year to non-classroom-based schools for each of the payments due in the spring of 2021 ... into the next fiscal year and the next school year: funding due in February will be deferred to November; funding due in March will be deferred to October; funding due in April will be deferred to September; funding due in May will be deferred to August"].)

The Legislature subsequently enacted SB 820 to account for some enrollment changes after February 29, 2020. (See § 43505(b).) NCB charter schools, however, were excluded and, during the 2020-21 fiscal year, remained limited to apportionments based on 2019-20 ADA. (See § 43505(c).) As a consequence, NCB charter schools whose ADA increased after February 29, 2020 did not receive public funding for those increases. By way of illustration, Petitioners The Classical Academies, Inc. and Coastal Academy Charter Schools, Inc. allege that SB 98 and SB 820 required them the educate more than 1,000 NCB students whose ADA was not counted for

[3] Section 56026.3 defines "local educational agency" to mean "a school district, a county office of education, a nonprofit charter school participating as a member of a special education local plan area, or a special education local plan area."

funding purposes in 2020-21. (See Pet., ¶¶ 30, 32.) Petitioners allege that, in contrast, some traditional public schools whose attendance decreased in between 2019-20 and 2020-21 received a surplus.[4]

In their petition for writ of mandate and complaint for declaratory and injunctive relief (Petition), Petitioners advance six causes of action. The first cause of action is for ordinary mandate pursuant to Code of Civil Procedure Section 1085. Petitioners pray for a writ directing Respondents and Defendants herein State of California, the California Department of Education (CDE) and named officials[5] (collectively "Respondents") to calculate funding in compliance with preexisting law and without regard for changes to apportionment under SB 98 and SB 820. The remaining five causes of action are for declaratory relief. With the second cause of action, Petitioners seek declarations that NCB schools have contracts or quasi-contacts with the State that entitle them to ADA-based apportionments without regard for SB 98 and SB 820. The third cause of action advances a theory of impaired contracts under Article I, Section 7 of the California Constitution.

In the fourth cause of action, Petitioners seek a declaration that the subject changes to apportionments, and the deferral of payments, "violate the contracts clause, the due process, clause, the State's constitutional obligations to fund public schools based on enrollment (Article XVI, Sections 8 and 8.5) and the State's statutory funding obligations... ." (Pet., ¶ 138.) The fifth and sixth causes of action contemplate additional declarations that SB 98 and SB 820 violate due process as well as Sections 8 and 8.5 of the California Constitution. The prayer includes a request for injunctive relief.

By stipulation, Petitioners and Respondents filed contemporaneous opening briefs, opposition briefs and reply briefs.

Legal Standards

A litigant may challenge the constitutionality or validity of a statute by petition for ordinary writ of mandate or complaint for declaratory relief. (See *City of Redondo Beach v. Padilla* (2020) 46 Cal.App.5th 902, 909; *California Public Records Research, Inc. v. County of Yolo* (2016) 4 Cal.App.5th 150, 185.) "'The interpretation of a statute and the determination of its constitutionality are questions of law.'" (*Valov v. Department of Motor Vehicles* (2005) 132 Cal.App.4th 1113, 1120.)

> It is a "bedrock principle that courts are exceedingly reluctant to declare legislation unconstitutional. ... 'All presumptions and intendments favor the validity of a statute

[4] Evidence does not establish the degree to which particular school districts experienced increases or decreases in enrollment between 2019-20 and 2020-21.

[5] Governor Gavin Newsom, State Superintended of Public Instruction Tony Thurmond, and State Controller Betty Yee are named in their official capacities.

> and mere doubt does not afford sufficient reason for a judicial declaration of invalidity. Statutes must be upheld unless their [un]constitutionality clearly, positively and unmistakably appears.' " [Citations.] A statute will not be deemed facially invalid on constitutional grounds unless its provisions present a total and fatal conflict with applicable constitutional prohibitions in all of its applications.

(*Barratt American, Inc. v. City of San Diego* (2004) 117 Cal.App.4th 809, 817.)

Discussion

Contract / Quasi-Contract

Petitioners argue that the charters supporting their schools, coupled with provisions in Sections 47601 *et seq.*, constitute enforceable contracts that obligate the State to apportion funding without regard for the disputed provisions in SB 98 and SB 820. They note that Section 47605 requires charter schools to admit students without charging any tuition. Section 47607 requires charter schools to meet pupil outcomes identified in the charters or risk charter revocation. Petitioners describe these statutory requirements as consideration flowing to the State in exchange for current-year ADA-based funding. Moreover, Petitioners characterize Section 47601 as the State's inducement to create charter schools. That section reflects a Legislative intent "to provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently from the existing school district structure... ." Petitioners contend that they answered the State's call and rely on ADA-adjusted funding to that end.

A statute only confers contractual rights "if the statutory language or circumstances accompanying its passage "clearly '... evince a legislative intent to create private rights of a contractual nature enforceable against the governmental body.'" (*Retired Employees Assn. of Orange County, Inc. v. County of Orange* (2011) 52 Cal.4th 1171, 1187, brackets omitted.) Although the legislative intent to create a contact must be clear, it need not express, and it may be implied from the circumstances. (See *id.*) "A court charged with deciding whether private contractual rights should be implied from legislation ... should 'proceed cautiously both in identifying a contract within the language of a ... statute and in defining the contours of any contractual obligation.'" (*Id.*, p. 1188.) "The requirement of a 'clear showing' that legislation was intended to create the asserted contractual obligation [citation] should ensure that neither the governing body nor the public will be blindsided by unexpected obligations." (*Id.*, pp. 1188-1189.)

The court in *Knapp, supra,* described charters under the CSA as "contracts detailing the school's educational programs, goals, students served, measurable pupil outcomes and measurement methods, and the school's governance structure." (See 146 Cal.App.4th at 114.) The *Knapp* court added that "[c]harters are granted for a specific term, typically not in excess of five years ... [and a]t the end of the term, the entity granting the charter may renew the school's contract." (*Id.*, pp. 714-715.) *Knapp,* however, does not clearly identify contractual benefits to which a charter school is entitled if it abides by the terms of its charter. Nor does *Knapp*, upon which Petitioners rely for their contract theory, hold or suggest that charter schools or their students possess contractual rights that preclude the Legislature from altering ADA calculations.

Petitioners advert to a line of cases expounding contractual rights under public-pension statutes. California has long characterized these rights as an element of compensation where the government acts as an employer. (See, e.g., *California Teachers Assn. v. Cory* (1984) 155 Cal.App.3d 1494, 505-506.) Petitioners do not argue that charter school students are like public employees who have bargained for compensation. Rather, they draw an analogy between public employees and charter schools.

Petitioners do not cite any decision extending the rationale of the public-pension cases to disputes over funding for charter schools or other public schools. To the contrary, at least since the California Supreme Court decided *Kennedy v. Miller* (1893) 97 Cal.429, 435, California has not acknowledged any "proprietary right" to funding apportioned to a school district. Hence, the court in *Kirchmann v. Lake Elsinore Unified School District* (2000) 83 Cal.App.4th 1098, 1111, observed that "although funds received by school districts are to be paid into the county treasury for the credit of the district [citations], numerous courts have stated that '"school moneys *belong to the state* and the apportionment of funds to a school district does not give the district a proprietary interest in the funds. . . ."'" (Emphasis in original.) These cases cut against the School Petitioners' theory that they have contractual rights to public funding based on a particular ADA calculation.

There are other cases, upon which Petitioners also rely, that involve unilateral public contracts. (See, e.g., *Cal Fire Local 2881 v. California Public Employees' Retirement Sys.* (2019) 6 Cal.5th 965, 988 ["A unilateral contract is one that is accepted by performance"].) *County of San Luis Obispo v. Gage* (1903) 149 Cal. 398 involved a statute appropriating funds for the maintenance of unsupported minors. (See 149 Cal. at 400 ["This act appropriates ... to each county ... one hundred dollars per annum for each orphan, and seventy-five dollars per annum for each half-orphan or abandoned child"].) After the State refused to pay the county's claim, the county sued, and the high court construed the statute as having conferred contractual rights:

> [I]t must be conceded upon principle that the obligation here in controversy is an obligation arising upon a contract. The state by the act of 1880, in effect promised to each county ... that if it should thereafter maintain and support persons of a class mentioned in the act, the state would appropriate and pay to such county the sums of money therein stated. **This was the equivalent of an offer upon condition, and upon the performance of the condition by any county the offer became a promise, and binding as such upon the state.** [...] It is analogous to the case where a natural person offers a reward for the performance of some particular act, as the recovery of property or the apprehension of a criminal. The offer is made to no person in particular; but when the act upon which it depends is performed, the offer and the act combined make a complete contract... .

(*Id.*, p. 407, emphasis added.) This notion of unilateral contract has been applied to Medi-Cal regulations promising particular rates to health care providers. (See *California Medical Assn. v. Lackner* (1981) 117 Cal.App.3d 552, 559-561 [following *Gage*, concluding that the subject regulations fixed particular rates supporting public-contract liability, and distinguishing as non-contractual a statute prescribing reimbursement for the "reasonable cost" of care].)[6]

Petitioners have not demonstrated that the CSA fixes ADA computations like the statute and regulations that fixed payments in *Gage* and *Lackner*. Section 47612.5(d)(1) provides, in part:

> Notwithstanding any other law and except as provided in paragraph (1) of subdivision (e), a charter school that has an approved charter may receive funding for nonclassroom-based instruction only if a determination for funding is made pursuant to Section 47634.2 by the state board. The determination for funding shall be subject to any conditions or limitations the state board may prescribe. The state board shall adopt regulations ... that define and establish general rules governing nonclassroom-based instruction that apply to all charter schools and to the process for determining funding of nonclassroom-based instruction by charter schools offering nonclassroom-based instruction other than the nonclassroom-based instruction allowed by paragraph (1) of subdivision (e). Nonclassroom-based instruction includes, but is not limited to, independent study, home study, work study, and distance and computer-based education.

In turn, Section 47634.2, subdivisions (a)(1) and (a)(4) provide, respectively:

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[6] *California Association of Nursing Homes, etc. v. Williams* (1970) 4 Cal.App.3d 800, involved the statute in question, which was codified in part in Welfare and Institutions Code Section 14104 and 14105. At the time, these sections authorized Medi-Cal reimbursement rates based on reasonable cost. (See 4 Cal.App.3d at 806-807, 817 and fns. 3-4.) The court rejected the notion that these two sections constituted a contractual offer like the one in *Gage*:

> Sections 14104 and 14105 ... do not express a statutory offer. They fix no scale of payment, but only a standard, i.e., reasonable cost, for an administrative regulation fixing a rate or rate formula. Despite the standard's verbal simplicity, its expression in a regulation involves "'highly technical matters requiring the assistance of skilled and trained experts and economists and the gathering and study of large amounts of statistical data and information.'" [Citation.] To say that an increased rate is reasonable does not mean that the rate preceding it was unreasonable. The reasonable cost standard allows so many variables that administrative implementation is indispensable to the creation of financial claims in specific amounts. The statutes do not amount to an offer in the contractual sense.

(*Id.*, p. 817.) To the extent *Williams* involved questions about a statutory offer to reimburse "reasonable cost," the *Lackner* court distinguished it. *Lackner* involved regulations that did not simply tie payments to reasonable cost.

> Notwithstanding any other provision of law, the amount of funding to be allocated to a charter school on the basis of average daily attendance that is generated by pupils engaged in nonclassroom-based instruction ... shall be adjusted by the State Board of Education. The State Board of Education shall adopt regulations setting forth criteria for the determination of funding for nonclassroom-based instruction ... . In developing these criteria and determining the amount of funding to be allocated to a charter school pursuant to this section, the State Board of Education shall consider, among other factors it deems appropriate, the amount of the charter school's total budget expended on certificated employee salaries and benefits and on schoolsites, as defined in paragraph (3) of subdivision (d) of Section 47612.5, and the teacher-to-pupil ratio in the school.
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> For the 2003-04 fiscal year and each fiscal year thereafter, the amount of funding determined by the State Board of Education pursuant to this section shall not be more than 70 percent of the unadjusted amount to which a charter school would otherwise be entitled, unless the State Board of Education determines that a greater or lesser amount is appropriate based on the criteria specified in paragraph (1) of subdivision (a). (Underling omitted.)

Title 5, Section 11963.2(b) of the California Code of Regulations further provides that "[a] determination of funding request approved by the State Board of Education [for nonclassroom-based instruction] shall be 70 percent, unless a greater of lesser percentage is determined appropriate[.]"

Despite the provisions cited above, Petitioners contend that their funding levels are fixed and guaranteed. Citing 5 C.C.R. Section 11964.3(a)(3),[7] Petitioners allege:

> Provided that ... [NCB] schools spend at least 40% of their budgets on certificated employees, and 80% of their budgets on instruction and related services, and maintain a 1:25 teacher to student ratio, they are entitled to receive the same full funding as a classroom-based program - a 100% funding determination.

(Pet., ¶ 97.) The cited subdivision, however, actually reads:

> If the percentage calculated pursuant to paragraph (1) of subdivision (c) of section 11963.3[8] equals or exceeds 40 percent, the percentage calculated pursuant to

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[7] Petitioners actually cite 5 C.C.R. Section 11963.3(a)(4), but the citation appears to be an inadvertent error. Given Petitioners' discussion of it, (see Pet., ¶ 97), the intended citation was 5 C.C.R. Section 11964.3(a)(3).)

[8] 5 C.C.R. Section 11963.3(c)(1) describes:

> paragraph (2) of subdivision (c) of section 11963.3[9] equals or exceeds 80 percent, and the ratio of average daily attendance for independent study pupils to full-time certificated employees responsible for independent study does not exceed a pupil-teacher ratio of 25:1 ... the Advisory Commission on Charter Schools **shall recommend to the State Board of Education approval of the request at 100 percent** (i.e. full funding), **unless there is a reasonable basis to recommend otherwise. If the recommended percentage is lower than the requested percentage, the recommendation to the State Board shall include the reasons justifying the reduction and, if appropriate, describe how any deficiencies or problems may be addressed by the charter school.** (Emphasis added.)

Accordingly, the court rejects Petitioners' argument that State Board regulations fix NCB charter schools' funding such that funding equal to that provided for classroom-based schools is a contractual right.

Although the cited funding statutes and regulations do not address the points in time at which ADA is adjusted, they undermine an argument that the CSA promises a fixed apportionment, or even a fixed ADA computation, for NCB schools. The expectation that the CSA and implementing regulations generate is one for an apportionment that is likely to be less than that available to other public schools. As a result, *Gage* and other cases involving promises of fixed payments upon completion of performance are inapposite.

At oral argument, Petitioners' counsel explained that Petitioners do not allege a contractual right to funding at a particular level, such as the overall funding received the year a charter petition is approved. He characterized Petitioners' position as one about rights to have enrolled students fully counted and to the same extent as students in traditional public schools. In other words, the tendered contractual terms are (1) funding based on current-year ADA and (2) funding on terms equal with traditional school districts. As authority, counsel cited Section 47630, which describes "the intent of the Legislature that each charter school be provided with operational funding[10] that is equal to the total funding that would be available to a similar school district serving a similar pupil population... ."

> A calculation showing the charter school's total **expenditures for salaries and benefits** for all employees who possess a valid teaching certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold issued by the Commission on Teacher Credentialing (and who work in the charter school in a position required to provide direct instruction or direct instructional support to students) **as a percentage of the school's total public revenues.** (Emphasis added.)

[9] 5 C.C.R. Section 11963.3(c)(2) describes "[a] calculation showing the charter school's total expenditures on instruction and related services as a percentage of the school's total revenues.[...]"

[10] "Operational funding" is "all funding except funding for capital outlay." (§ 47632(f).)

To clarify, the court asked Petitioners' counsel whether the State could have given the School Petitioners the very amounts they received for the 2020-21 fiscal year by reducing per-pupil allotments in lieu of holding ADA to 2019-20 levels. Petitioners' counsel responded affirmatively and asserted that, as long as the per-pupil allotments for charter school students equaled allotments for other public school students, reducing overall funding was consistent with Petitioners' theory of contract.

The court is still not convinced. The two most important factors dictating apportionments are ADA and per-pupil allotments, and it is unlikely that the Legislature intended contractually to guarantee one factor but not the other. Given the above-discussed statutory and regulatory provisions governing the funding of NCB charter schools, and given the precedents rejecting any vested interest in public-school funding, the court's view remains that the CSA does not confer contractual rights that Petitioners posit.

Petitioners make additional arguments about the Legislature's intent to confer contractual apportionment rights, but the arguments are not persuasive. Petitioners cite to Title 20 of the United States Code, pursuant to which the State applied for federal funding to support charter schools in California. (See Rosenberg Decl., Exh 5.) When CDE applied for federal funding in 2010, it described the statutorily required elements of a California charter petition as a "legally-approved charter contract between the school and its authorizer." (*Id.*, Exh. 5, p. 21.) This description responded to a federal definition of a "charter school" as one with a "written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured." (20 U.S.C. § 7221i(2)(L).) Petitioners suggest that CDE's description of charter petitions as contracts reflects a legislative promise to fund charter schools at current-year ADA.

Petitioners' description of CDE's application for federal funding is incomplete. The application provides:

> The approved petition charter serves as a legally-approved charter contract between the school and its authorizer. Further, the required 16 charter elements provide a comprehensive description of the obligations and responsibilities of the charter school and its authorizer. For example, a charter school must include a reasonably comprehensive description of the measurable pupil outcomes it will meet for annual reviews or renewal ... and **in exchange, the charter authorizer is obligated to evaluate the identified pupil outcomes in the charter when making decisions about school operations, renewal, or other matters under an authorizer's purview.**

(Rosenberg Decl., Exh. 5, p. 21, emphasis added.) These comments about an exchange between the charter school and its authorizer do not clearly reflect a legislative intent trained on ADA.

More fundamentally, an executive agency's understanding of a prior Legislature's intent for a given statute is of limited if any value to a court construing the statute. Although an executive agency's contemporaneous understanding of a statute may be relevant in the absence of more direct evidence of legislative intent, (see *Association of California Ins. Cos. v. Jones* (2017) 2 Cal.5th 376, 395-396), and an agency's construction of its authorizing legislation may be entitled to deference depending on the circumstances, (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7-8), statutory interpretation ultimately remains a question for the courts. CDE's description of the exchange of obligations between a charter school and its authorizer do not disclose a clear legislative intent to abandon authority to amend statutes dictating charter school funding levels. As a result, the 2010 application for federal funding does not assist Petitioners.

The same may be said of former State Senator Gary Hart's (Hart) statements about the CSA's meaning. Hart drafted and sponsored the bill that led to the CSA. (Hart Decl., ¶ 3.) He now asserts that the Legislature intended the CSA to fund charter schools according to current-year ADA. (See *id.*, ¶ 9.) Statements by authors of legislation, however, are not sources of legislative intent unless the statements have been communicated to the full Legislature. (See *People v. Garcia* (2002) 28 Cal.4th 1166, 1175, fn. 5.) But even if Hart's views about the original intent for the CSA were relevant, they would not *clearly* evince the Legislature's intent to confer contractual rights to public school funding. (See *Retired Employees Assn. of Orange County, Inc., supra*, 52 Cal.4th at 1187.)

In sum, Petitioners have not established any rights against ADA adjustments, or rights to apportionments more generally, cognizable in contract. As a result, the court need not reach the issue whether such contractual rights may have been unconstitutionally impaired when SB 98 or SB 820 were enacted into law. (See *Medina v. Board of Retirement* (2003) 112 Cal.App.4th 864, 871 ["When a claim is presented under the contract clause, it must first be determined 'whether there is a valid contract to be impaired'"].)

Finally, the court rejects Petitioners' theories of quasi-contract or estoppel. Given the Legislature's plenary authority over public schools, Petitioners must establish a constitutional violation to obtain any relief. (See *California Teachers Assn. v. Hayes* (1992) 5 Cal.App.4th 1513, 1524 ["The Legislature's power over the public school system has been variously described as exclusive, plenary, absolute, entire, and comprehensive, subject only to constitutional constraints"].) Principles of quasi-contract and estoppel, however, cannot be used to establish a constitutional impairment of contracts. (See *Medina, supra*, p. 871.)

<u>Due Process</u>

Petitioners argue that SB 98 and SB 820 violated NCB charter schools' vested property rights as well as their students' fundamental rights to an education. Neither due process theory has merit.

Insofar as Petitioners tender a theory of procedural due process, they are mistaken. Members of the public are not entitled to a hearing or other procedure before the Legislature enacts a statute affecting their interests. (See *Halverson v. Skagit County* (9th Cir. 1994) 42 F.3d 1257, 1260; see also *Today's Fresh Start*, 57 Cal.4th at 212 [state and federal due process clauses are substantially identical, and California courts look to federal decisions on questions about due process].)

Petitioners have not established a substantive due process violation either. "'To establish a substantive due process claim, a plaintiff must, as a threshold matter, show a government deprivation of life, liberty, or property.'" (*Chan v. Judicial Council of California* (2011) 199 Cal.App.4th 194, 201.) As noted above, school districts do not possess property interests in state funding. The School Petitioners would distinguish themselves from traditional school districts, as well as their interests in public funding, based on the contractual nature of their charters. But as discussed above, neither these charters nor the Education Code confer a contractual right to funding at a particular level or ADA calculation.

The students among the Petitioners have likewise failed to establish any violation of substantive due process. Although the California Constitution confers a fundamental right to a public education, (see *Campaign for Quality Education v. State of California* (2016) 246 Cal.App.4th 896, 906), that right does not require education of a particular quality, or expenditures beyond those expressly memorialized in the California Constitution itself. (See *id.*, pp. 912-914; *id.*, p. 914 ["[T]here is no constitutional mandate for the Legislature 'to provide funds for each child in the State at some magic level to produce either an adequate-quality educational program or a high-quality educational program'"].) Despite the negative consequences that they attribute to SB 98 and SB 820, Petitioners have not established that their NCB students actually or effectively have been deprived of an education for any period during the 2020-21 fiscal year. Consequently, they have not established any violation of a fundamental right that could amount to a substantive due process violation.

Finally, the court rejects Petitioners' due-process argument that SB 98 retroactively impaired vested rights to funding based on current-year ADA. (See *Plotkin v. Sajahtera, Inc.* (2003) 106 Cal.App.4th 953, 962 [state and federal due process provisions "ensure that 'vested' rights cannot be retroactively impaired without sufficient justification or in an irrational or arbitrary manner"].) As previously explained, charters, constitutional provisions and other sources of law do not confer vested rights to funding based on current-year ADA. Yet, Petitioners predicate their retroactivity argument entirely on the existence of such rights. Petitioners do not argue that any attendance reports they filed before SB 98 took effect triggered rights to funding based on the reports. (Cf. *Fullerton High School Dist. v. Riles* (1983) 139 Cal.App.3d 369, 387.) Petitioners assert they enrolled additional students before SB 98 took effect, but do not cite any statute or regulation providing that enrollment in itself creates a corresponding, vested right to funding.

Furthermore, Petitioners have not demonstrated that SB 98, which took effect in June 2020, applied retroactively. By its terms, SB 98 prescribed ADA calculations for an upcoming fiscal year. (See Petitioners' Opening Brf. at 30:8-9.) It did not command a forfeiture of funds already received or recalculation of funds previously committed. (Cf. *Fullerton High School*, pp. 384-386.)

The crux of Petitioners' retroactivity argument is that NCB charter schools planned for expanded enrollments and enrolled additional students with an *expectation* that funding would be based on current-year ADA. Yet, Petitioners have not cited any precedent predicating vested rights solely upon an expectation against Legislative amendments affecting funding. Given this, and given the several cases denying the existence of vested rights in public-school apportionments, the court rejects Petitioners' position.

<u>California Constitution, Article XVI, Sections 8 and 8.5</u>

In the Petition, Petitioners alleged that the disputed provisions in SB 98 and SB 820 ran afoul of Sections 8 and 8.5 of Article XVI of the California Constitution. Article XVI, Section 8 memorializes a minimum guarantee that "moneys to be applied by the state for the support of the school districts and community college districts shall not be less than the greater of" amounts calculated pursuant to three alternative tests. Article XVI, Section 8.5(a) of the California Constitution provides:

> **In addition to the amount required to be applied for the support of school districts and community college districts pursuant to Section 8, the Controller shall** during each fiscal year **transfer and allocate all revenues available pursuant to paragraph 1 of subdivision (a) of Section 2 of Article XIII B**[11] **to that portion of the State School Fund restricted for elementary and high school purposes**, and to that portion of the State School Fund restricted for community college purposes, respectively, in **proportion to the enrollment in school districts** and community college districts respectively. (Emphasis added.)

Despite their references to ADA adjustments, Sections 8 and 8.5 of Article XVI do not dictate apportionments *among* school districts. Instead, they contemplate funding on a statewide basis. (See § 41203 [calculations pursuant to Cal. Const. Art. XVI, § 8(b) "shall be made as a single, aggregate calculation for the school districts..."].) Allocations among the various districts appear to be determined by statute. (See § 41203.1(a), 41203.7(b), 41206, 41206.1, 41207(d), 41330 *et seq.*) In their legal briefs, Petitioners concede as much. (See Petitioners' Opp. Brf. at 41:26-27 ["Although Section 8 does not specify the particular funding appropriations that must be made to each school district and charter school..."]; *id.* at 44:26-28 ["[Petitioners] are not claiming that Section 8 or Section 8.5 on its own compels any specific formula on how spending on education is determined..."].) Subject to constitutional constraints only, the Legislature is free to amend its enactments.

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[11] Section 2(a)(1) of Article XIII B provides:

> Fifty percent of all revenues received by the state in a fiscal year and in the fiscal year immediately following it in excess of the amount which may be appropriated by the state in compliance with this article during that fiscal year and the fiscal year immediately following it shall be transferred and allocated, from a fund established for that purpose, pursuant to Section 8.5 of Article XVI.

Petitioners' reliance on Sections 8 and 8.5 of the California Constitution appears to be part of a broader argument about interests in equitable state funding. To argue that SB 98 and SB 820 violate these interests, Petitioners discuss three cases, namely *Serrano v. Priest* [*Serrano I*] (1971) 5 Cal.3d 584, *Serrano v. Priest* [*Serrano II*] (1976) 18 Cal.3d 728, and *Butt v. State of California* (1992) 4 Cal.4th 668. *Serrano I* involved an equal-protection challenge to California's public-school financing system. When *Serrano I* was decided, school districts were funded largely from local property taxes, and inter-district disparities in wealth produced stark funding disparities among districts. On appeal from a dismissal after demurrer, the high court determined that students have a fundamental interest in their education, that strict scrutiny applies to inter-district differences in funding, and that the allegations could be read to establish the absence of any compelling government interest in the prevailing financing scheme. The court thus held that the complaining students and their parents had stated a cause of action based on equal protection. (See *Butt*, p. 682 ["*Serrano I* concluded at length that such a scheme violated both state and federal equal protection guaranties because it discriminated against a fundamental interest--education--on the basis of a suspect classification--district wealth--and could not be justified by a compelling state interest under the strict scrutiny test thus applicable"].)

By the time *Serrano II* was decided, the Legislature had made some changes to the financing system at issue in *Serrano I*. The trial court concluded that these changes had not remedied inter-district funding disparities and had not conformed to the California Constitution's equal protection command. The high court agreed and reaffirmed its determination that funding classifications based on wealth are suspect and must withstand strict scrutiny.

Butt involved a public school district which, due in part to mismanagement, was unable to fund schools for the final six weeks of the school year. After the trial court enjoined the State to fund a full year, the California Supreme framed the issue on appeal as "[w]hether the State has a constitutional duty, aside from the equal allocation of educational funds, to prevent the budgetary problems of a particular school district from depriving its students of 'basic' educational equality." (*Butt*, p. 674.) After canvassing cases including *Serrano I* and *Serrano II*, the court declared it "well settled that the California Constitution makes public education uniquely a fundamental concern of the State and prohibits maintenance and operation of the common public school system in a way which denies basic educational equality to the students of particular districts." (*Id.*, p. 685.) Notwithstanding that no suspect classification was involved, the high court applied strict scrutiny because the fundamental right to basic educational equality was at stake. (*Id.*, pp. 685-687.) Ultimately, the court agreed with the trial court that the district's budgetary crisis was extreme and threatened students' rights to basic educational equality. (*Id.*, p. 692.)

In their briefing, Respondents point out that *Serrano I*, *Serrano II* and *Butt* are all equal protection cases. They observe that the Petition does not contain an equal protection claim. They therefore argue that Petitioners' reliance on these cases is misplaced.

At oral argument, Petitioners' counsel conceded that the Petition does not include an equal protection claim. The concession is well-taken. The pleadings delimit the parties' legal claims and defenses. (See *Electronic Funds Solutions, LLC v. Murphy* (2005) 134 Cal.App.4th 1161, 1182.) The Petition contains six causes of action. Although the headings above these causes of action identify some constitutional provisions, they do not identify the equal protection clauses in the California or United States Constitutions. Nor do the allegations include a comparison of classifications impacting equal protection with the governmental interests supporting the classifications, as one would expect for an equal protection claim. (See, e.g., *People v. Wolfe* (2018) 20 Cal.App.5th 673, 686-687.) Furthermore, Petitioners enumerate their constitutional claims more than once without referencing equal protection. (See Pet., ¶¶ 115, 138 and Prayer ¶ 3.) Suffice it to say that the Petition cannot reasonably be read to contain an equal protection claim. Accordingly, Petitioners' reliance on equal protection authorities is indeed misplaced.

<u>Improper Parties</u>

Respondents ask the court to dismiss certain of the public officials among them as improperly joined. Because the court does not grant Petitioners any relief in this action, it need not decide and does not decide whether certain of the Respondents should be dismissed.

<u>Disposition</u>

The petition for writ of mandate is denied.

The CSA does not confer upon NCB charter schools contractual rights to public funding based on current-year ADA. The balance of Petitioners' complaint for declaratory relief is dismissed as duplicative and as not necessary or proper under the circumstances. (See Code Civ. Proc. § 1061; *Gafcon, Inc. v. Ponsor & Associates* (2002) 98 Cal.App.4th 1388, 1403 [Declaratory relief is prospective only; it does not serve to redress past wrongs].)

No other relief is granted.

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Counsel for Respondents shall lodge for the court's signature a proposed judgment that incorporates this ruling as an exhibit.

Unless otherwise ordered, any administrative record, exhibit, deposition, or other original document offered in evidence or otherwise presented at trial, will be returned at the conclusion of the matter to the custody of the offering party. The custodial party must maintain the administrative record and all exhibits and other materials in the same condition as received from the clerk until 60 days after a final judgment or dismissal of the entire case is entered.

SO ORDERED.

Dated: July 27, 2021

James P. Arguelles

Hon. James P. Arguelles
California Superior Court Judge,
County of Sacramento

Case No. 34-2020-80003489
Case Title: REYES vs. STATE OF CALIFORNIA

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the **PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF – FINAL RULING,** by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at 720 9th Street, Sacramento, California, 95814 each of which envelopes was addressed respectively to the persons and addresses shown below:

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I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

Dated: July 28, 2021

Superior Court of California, County of Sacramento

By: D. Ward,
Deputy Clerk