

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

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No. C078491

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ANDERSON UNION HIGH SCHOOL DISTRICT,

Plaintiff and Appellant,

v.

SHASTA SECONDARY HOME SCHOOL,

Defendant and Respondent.

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On Appeal from the Superior Court of Shasta County  
(Case No. 177944, Honorable Monica Marlow, Judge)

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**APPLICATION TO FILE BRIEF AMICUS CURIAE AND  
BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION  
IN SUPPORT OF DEFENDANT AND RESPONDENT**

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TO BE FILED IN THE COURT OF APPEAL

State of California, Court of Appeal, Three Appellate District

Court of Appeal Case Number: **C078491**

Superior Court Case Number: **177944**

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APPELLANT/PETITIONER: **Anderson Union High School Dist.**

RESPONDENT/REAL PARTY IN INTEREST: **Shasta Secondary Home School**

**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

(Check one):  INITIAL CERTIFICATE  SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (name):

**Amicus Curiae Pacific Legal Foundation**

2.a.  There are no interested entities or persons that must be listed in this certificate under rule 8.208.

b.  Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of Interest (Explain):
(1)	
(2)	
(3)	
(4)	

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

/s/ Ralph W. Kasarda

Date: **Dec. 4, 2015**

**RALPH W. KASARDA**

**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

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Pursuant to California Rule of Court 8.200(c), Pacific Legal Foundation (PLF) respectfully submits this application to appear as Amicus Curiae in support of Defendant and Respondent Shasta Secondary Home School, and combined herein is the proposed brief amicus curiae.

**APPLICATION OF PACIFIC LEGAL  
FOUNDATION TO APPEAR AS AMICUS  
CURIAE IN SUPPORT OF RESPONDENT  
AND IN SUPPORT OF AFFIRMANCE**

TO THE HONORABLE PRESIDING JUSTICE:

Pursuant to California Rule of Court 8.200(c), Pacific Legal Foundation (PLF) requests leave to file the attached brief amicus curiae in support of Defendant and Respondent Shasta Secondary Home School. PLF is familiar with the issues and scope of their presentation in this case. PLF believes the attached brief will aid the Court in its consideration of those issues.<sup>1</sup>

PLF is a nonprofit, tax-exempt foundation incorporated under the laws of California, organized for the purpose of litigating important matters of public interest. PLF is headquartered in Sacramento, California, and has satellite offices in Washington and Florida. Formed in 1973, PLF believes in and supports the principles of limited government and free enterprise, the right of individuals to own and make reasonable use of their private property, and

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<sup>1</sup> Pursuant to Rule 8.200(c)(3), Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and that no person or entity made a monetary contribution specifically for the preparation or submission of this brief.

the protection of individual rights. PLF has participated as amicus curiae in many cases involving education reform including *Cal. Charter Schs. Ass'n v. L.A. Unified Sch. Dist.*, 60 Cal. 4th 1221 (2015); *Today's Fresh Start, Inc. v. L.A. Cnty. Office of Educ.*, 57 Cal. 4th 197 (2013); *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125 (2011); *Wells v. One2One Learning Found.*, 39 Cal. 4th 1164 (2006); *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *Mitchell v. Helms*, 530 U.S. 793 (2000); and *Wilson v. State Bd. of Educ.*, 75 Cal. App. 4th 1125 (1999).

This case raises important issues of education law as well as policy considerations concerning the role of nonclassroom-based charter schools as a means for improving California's public education system. PLF has a longstanding interest in education law, and in ensuring that parents have choices in how their children are educated. To that end, PLF has developed a significant expertise in California's Charter Schools Act of 1992 and other school choice programs across the country. PLF believes that its public policy perspective and litigation expertise will provide a helpful viewpoint on the issues presented that will assist the Court in its adjudication.

**PACIFIC LEGAL FOUNDATION’S  
BRIEF AMICUS CURIAE  
IN SUPPORT OF RESPONDENT**

**INTRODUCTION AND  
SUMMARY OF ARGUMENT**

California enacted the Charter Schools Act of 1992, in order to improve educational outcomes for all of California’s public school students. Cal. Educ. Code § 47601(a).<sup>2</sup> The Act creates “new professional opportunities for teachers” and encourages those teachers to undertake “innovative teaching methods” to improve the academic outlook of California’s public school students. Section 47601(c)-(d). The state’s goal is not to replace the public school system, but to provide a path for improving *all* public schools for *all* students. To accomplish this, the Act “provide[s] parents and pupils with expanded choices in the types of educational opportunities that are available. Section 47601(e). Increased parental choice leads to “vigorous competition within the public school system to stimulate continual improvements in all public schools.” Section 47601(g).

The Legislature also encourages the development of nonclassroom-based distance learning. *See* Cal. Educ. Code § 51865, *et seq.* Distance learning uses technology to allow students and teachers to interact from different locations. Section 51865(a). The Legislature encourages public

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<sup>2</sup> All statutory citations are to the California Education Code unless otherwise indicated.

school districts to employ distance learning in rural areas, so that each California child has “equal access to educational opportunities, regardless of where he or she lives.” Section 51865(b)(1); *see also* section 51865(c)(4) (distance learning especially benefits rural areas “[t]hat are unable to provide [] college preparatory and enrichment courses.”) The Act encourages nonclassroom-based charter schools to establish resource centers that give students, parents, and educators the opportunity to meet face-to-face on a regular basis. *See* section 47605.1.

Shasta County provides an ideal setting for a nonclassroom-based charter school offering distance learning. Comprising 3,785 square miles, Shasta County is the 13th largest by size in California,<sup>3</sup> but ranked 30th by population.<sup>4</sup> Residents are dispersed throughout the rural mountainous county in three cities (Anderson, Redding, and Shasta Lake City); nineteen named populated areas, and seven unincorporated communities. Shasta County is surrounded by other rural mountain counties: Siskiyou to the north; Trinity to the west; Lassen and Modoc Counties to the east; and Tehama and Plumas Counties to the south.

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<sup>3</sup> Online California, *California Counties Land Area*, <http://www.onlinecalifornia.us/countyarea.shtml>. In comparison, Sacramento County is 966 square miles, while San Francisco County is only 47.

<sup>4</sup> Online California, *County Population, California*, <http://www.onlinecalifornia.us/countypopulation.shtml>.

The Shasta Secondary Home School (SSHS) is a successful nonclassroom-based charter school in Shasta County authorized by the Shasta Union High School District. *Anderson Union High Sch. Dist. v. Shasta Secondary Home Sch.*, No. 177944, slip op. at \*8 (Shasta Cnty. Super. Ct. Dec. 2, 2014). It offers instruction personalized for each of its students in grades 7-12, which includes distance learning. *Id.* As a public charter school, SSHS must enroll all students from Shasta County and its adjacent counties who wish to attend, subject to the school's capacity. Section 47605(d)(2)(A)-(B). It currently serves over 230 students from Shasta and Tehama Counties. Response Brief at 18.

In order to provide essential resources to its nonclassroom-based students, SSHS opened a resource center in the unincorporated Shasta County town of Cottonwood. *Anderson Union High Sch. Dist.*, slip op. at \*7. The Cottonwood resource center is located in Cottonwood, approximately "15 to 18 miles" south of Redding, near the location of SSHS's other resource centers. Opening Brief at 10; *Anderson Union High Sch. Dist.*, slip op. at \*8. The resource center serves students in southern Shasta County and northern Tehama County. *Id.* The resource center is located within Shasta County, however, it is located outside the boundaries of the Shasta Union High School District. Instead, the resource center is located within the jurisdiction of the Anderson Union High School District (Anderson). Anderson brought this

lawsuit alleging that this resource center is illegal under section 47605.1, because it is not located in a county “adjacent” to the charter school’s authorizing school district. Indeed, it is located in the *same* county, not an adjacent one.

Anderson’s hypertechnical reading of the statute is plainly contrary to legislative intent and would produce absurd results. Section 47605.1 is designed to permit charter schools to open resource centers in adjacent counties in order to facilitate the teaching of students located outside of a charter school’s primary county; it is not designed to punish those students who actually reside in the primary county. *See* sections 47605.1(c)(1)-(2). The court below examined all applicable California Education Code sections and found no law or policy prohibiting SSHS from operating a resource center in another school district but in the same county as itself. *See Anderson Union High Sch. Dist.*, slip op. at \*13 (no Education Code sections prohibit the Charter School from operating a resource center at the Cottonwood location); *id.* at 14 (no public policy is violated by locating a resource center within the county but outside the boundaries of the authorizing school district).

In addition to producing the absurd results examined below, Anderson’s reading of the statute would cause significant harm to the very “high-risk” students these laws are designed to protect. *See* section 51865(c)(3) (nonclassroom-based programs are designed “to meet the needs of high-risk pupils who would be likely to drop out of traditional classroom programs.”).

Distance learning programs—like those employed by SSHS—improve educational outcomes for thousands of students who would otherwise be left behind in a traditional classroom. Gregg Vanourek, *A Primer on Virtual Charter Schools: Mapping the Electronic Frontier*, NAT'L ASS'N OF CHARTER SCH. AUTHORIZERS: ISSUE BRIEF (Aug. 2006), at 5 (distance learning advances the education of students who have been marginalized in traditional public schools).<sup>5</sup> Moreover, resource centers—like the one at issue here—are able to reduce the disadvantages of nonclassroom-based instruction by providing face-to-face interaction with students, parents, and educators when particular needs arise. See Nat'l Educ. Policy Ctr., *Virtual Schools in the U.S. 2014: Politics, Performance, Policy, and Research Evidence* 43 (Mar. 2014) (NEPC) (a local facilitator has “a significant impact with online student success”).<sup>6</sup> SSHS operates precisely how the Legislature envisioned; it is helping at-risk students in rural areas receive the personalized education they need.

This Court should affirm the decision below.

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<sup>5</sup> [Http://www.nasdse.org/Portals/0/Documents/Primer\\_IssueBriefNo10.pdf](http://www.nasdse.org/Portals/0/Documents/Primer_IssueBriefNo10.pdf).

<sup>6</sup> [Http://greatlakescenter.org/docs/Policy\\_Briefs/Molnar\\_VirtualSchools2014.pdf](http://greatlakescenter.org/docs/Policy_Briefs/Molnar_VirtualSchools2014.pdf).

## ARGUMENT

### I

#### **ANDERSON’S TORTURED READING OF THE EDUCATION CODE VIOLATES THE SPIRIT AND INTENT OF CALIFORNIA EDUCATION POLICY AND LEADS TO ABSURD RESULTS**

To facilitate its nonclassroom-based learning models of education, SSHS operates three resource centers in Shasta County. Two resource centers are located in Redding, which is within SSHS’s authorizing school district—Shasta Union High School District. *Id.* at 6. In 2013, the charter school opened the Cottonwood resource center challenged in this lawsuit. At each resource center, students may check out instructional materials, use computer workstations, work on school assignments, or receive tutoring. *Anderson Union High Sch. Dist.*, slip op. at \*7; see Response Brief at 25 (discussing activities at the resource centers).

#### **A. The Location of SSHS’s Cottonwood Resource Center Complies with the Plain Language of the Education Code**

Anderson wants to shut down the Cottonwood resource center on the theory that section 47605.1(c) prohibits a charter school from locating a resource center within the same county but outside the boundaries of the authorizing school district. See Opening Brief at 29. Anderson is wrong. Section 47605.1(c) provides conditions for when a charter school chooses to operate in an *adjacent* county. Section 47605.1(c) contains no language



prohibiting a charter school from operating a resource center in the same county where it is located. Section 47605.1(c) provides:

Notwithstanding any other provision, a charter school may establish a resource center, meeting space, or other satellite facility located in a county adjacent to that in which the charter school is authorized if the following conditions are met:

- (1) The facility is used exclusively for the educational support of pupils who are enrolled in nonclassroom-based independent study of the charter school.
- (2) The charter school provides its primary educational services in, and a majority of the pupils it serves are residents of, the county in which the school is authorized.

Section 47605.1(c). After a thorough examination of the Education Code, the court below concluded that “[n]o other limitation on location is set forth in any statute, and the statutory scheme does not evidence any intent to further limit where [resource centers] may be located.” *Anderson Union High Sch. Dist.*, slip op. at 15. There is simply no law restraining SSHS from operating a resource center within Shasta County, but outside the boundaries of its authorizing school district.

**B. Anderson’s Interpretation of Section 47605.1(c)  
Would Not Redress Anderson’s Injury,  
and Would Lead to Absurd Results**

Anderson complains that it is harmed by SSHS’s Cottonwood resource center, because (1) students in its district will transfer to SSHS causing the reduction in state funding to Anderson, Complaint ¶ 19; and (2) Anderson will lose the ability to effectively govern the education of students in its

district who are enrolled in SSHS. *Id.* ¶ 20. Anderson’s interpretation of section 47605.1(c) should be rejected because it will produce absurd results that will not redress the harm of which Anderson complains. *See Jurcoane v. Superior Court*, 93 Cal. App. 4th 886, 893 (2001) (“[W]here the language of a statutory provision is susceptible of two constructions, one of which, in application, will render it reasonable, fair and harmonious with its manifest purpose, and another which would be productive of absurd consequences, the former construction will be adopted.”).

Anderson’s interpretation of section 47605.1(c) fails for three reasons. First, under section 47605.1(c), SSHS could open and operate a resource center in adjacent Tehama County. For instance, assuming an agreement was reached, SSHS could locate a resource center at the Evergreen Middle or Elementary Schools.<sup>7</sup> These schools are located on the Tehama County side of Cottonwood, only about 4 miles southwest of the current Cottonwood resource center.<sup>8</sup>

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<sup>7</sup> Evergreen School District, <http://www.evergreenusd.com>.

<sup>8</sup> Cottonwood is a sprawling unincorporated community straddling Shasta County’s southern border with Tehama County. Cottonwood’s boundaries are not defined by political county borders, but by a zip code that extends south into Tehama County. *See* Geoff Johnson, *Tehama County Sues Shasta, DMV, INSIDE BAY AREA* (Nov. 14, 2009), [http://www.insidebayarea.com/ci\\_13788566](http://www.insidebayarea.com/ci_13788566); Amanda Winters, *Tehama County Man Summoned to Serve on Shasta County Jury*, *RECORD SEARCHLIGHT* (May 24, 2009), <http://www.redding.com/news/tehamacountymansummonedtoserveonshasta>.

The hypothetical Evergreen resource center, on the Tehama side of Cottonwood, would still provide nonclassroom-based educational services to Shasta County students from Cottonwood and Anderson, and Anderson would still face the loss of attendance and funding issues, and lose the ability to govern the education of those students. That section 47605.1(c), as interpreted by Anderson, could be so easily evaded merely by relocating a resource center a few miles away suggests Anderson's interpretation is flawed and disfavored. *See Horwich v. Superior Court*, 21 Cal. 4th 272, 280 (1999) (principles of statutory construction counsel that courts should avoid an interpretation that leads to anomalous or absurd consequences).

Second, section 47605.1(c) does not prevent charter schools located in counties adjacent to Shasta County from operating their resource centers within Anderson's boundaries in Cottonwood.<sup>9</sup> For instance, the Tehama eLearning Academy is a nonclassroom-based charter school in Red Bluff, Tehama County, approximately 16 miles south of Cottonwood. Students in Shasta County, including those from the Anderson school district, may enroll in the Tehama eLearning Academy. *See* section 47605(d)(2)(A) (charter schools must admit all students who desire to attend). Were the Tehama eLearning Academy to operate a resource center on the Shasta County-side of Cottonwood for students residing within the jurisdiction of the Anderson Union High School District, Anderson would again be confronted with the loss

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<sup>9</sup> [Http://www.telacademy.org](http://www.telacademy.org).

of attendance and funding issues, as well as the claimed loss of ability to effectively govern the education of students in its district.

In addition to Tehama eLearning Academy, there are at least four other nonclassroom-based charter schools in the counties surrounding Shasta County that could locate a resource center in Cottonwood under section 47605.1(c).<sup>10</sup> It makes no sense that nonclassroom-based charter schools from each of the counties adjacent to Shasta County can support the education of Shasta County students through a resource center in Cottonwood, but not Shasta County's own SSHS. Yet, that is Anderson's interpretation of the Education Code.

Finally, under Anderson's interpretation of section 47605.1(c), SSHS could open a resource center *anywhere* in an adjacent county—even in the furthest reaches of those counties—but not anywhere in its own county. For instance, SSHS could operate a resource center in the city of Fort Bidwell, some 200 miles away in eastern Modoc County, but could not operate a resource center within a few miles of its own main offices in Shasta County. There is no logical explanation for such a strained reading of the Education Code.

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<sup>10</sup> Charter schools offering nonclassroom-based instruction in counties adjacent to Shasta County include, but are not limited to, Tehama eLearning Academy (Tehama County), Golden Eagle Charter School (Siskiyou County), New Day Academy Charter School (Modoc County), Juniper Ridge Virtual Academy (Lassen County), and Plumas Charter School (Plumas County).

## II

### **THE DECISION BELOW SHOULD BE AFFIRMED TO ALLOW THE COTTONWOOD RESOURCE CENTER TO CONTINUE TO SUPPORT CALIFORNIA'S EDUCATIONAL POLICIES AND GOALS**

Anderson's reading of section 47605.1(c), and the closure of the Cottonwood resource center, would degrade the educational opportunities of Shasta County students. The California Legislature has chosen to promote school choice through charter schools, California Education Code section 47600, *et seq.*, and specifically directs the use of distance learning to achieve important educational policy objectives of the State. Section 51865(b). Distance learning and nonclassroom-based education, as offered by SSHS, offer two important advantages over traditional public schools: (1) expanded opportunities for access to education; and (2) increased *quality* of education through access to and use of technology. Preventing resource centers from operating within the boundaries of the county in which the charter school is located, would result in the denial of great opportunities for thousands of California children.

#### **A. Nonclassroom-Based Instruction Expands Access to Education**

California recognizes that distance learning should be offered in this State to promote "equity in education." Section 51865(b)(1). Every pupil in California's public schools must have equal access to educational opportunities

“regardless of where he or she lives.” *Id.*; *see id.* section 51007 (all students, “regardless of geographic location shall have equitable access to educational programs designed to strengthen technological skills”). Education experts recognize that nonclassroom-based schools like SSHS promote equity in education by providing students with access to education regardless of where they reside. *See* Bryan C. Hassel & Michelle Godard Terrell, U.S. DEP’T OF EDUC. SEC’Y’S NO CHILD LEFT BEHIND LEADERSHIP SUMMIT, *How Can Virtual Schools Be a Vibrant Part of Meeting the Choice Provisions of the No Child Left Behind Act?* 4 (2001) (the greatest advantage of nonclassroom based schools is the “learning anytime, anyplace” format);<sup>11</sup> Kevin P. Brady, *et al.*, *Unchartered Territory: The Current Legal Landscape of Public Cyber Charter Schools*, 2010 B.Y.U. EDUC. & L.J. 191, 196-97 (2010) (students enrolled in cyber charter schools are able to access the curriculum twenty-four hours a day, seven days a week); Vanourek, *supra*, at 5 (distance learning allows students to access their course content in an online environment that is unrestricted by location and time).

Additionally, distance learning provides students with a diversity among educational institutions, in the means of instruction, and in the delivery of educational and training services. Section 51865(b)(3). Schools like SSHS are able to reach students who are either not currently served or underserved

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<sup>11</sup> [Http://www.doe.virginia.gov/federal\\_programs/esea/title1/part\\_a/archive/how\\_can\\_virtual\\_schools.pdf](http://www.doe.virginia.gov/federal_programs/esea/title1/part_a/archive/how_can_virtual_schools.pdf).

by traditional schools. Students who particularly benefit from distance learning include rural students like those in Shasta County, as well as students who are homebound due to medical or disciplinary issues, students who do not “fit well” or have been marginalized in traditional public schools, high-mobility students, incarcerated students, students who are employed in part-time jobs, special education students, and home school students. Vanourek, *supra*, at 5.

Nonclassroom-based charter schools provide students with increased access to and use of technology. It is common practice for public cyber charter schools to provide students with the technology necessary to participate in a particular course, including computers, software, and oftentimes free internet access. *See Vanourek, supra*, at 5 (describing the support students often receive from virtual charter schools). Thus, the access and mode of instruction provided by nonclassroom-based charter schools gives students experience with current technology skills, including visual and information literacy, adaptability and self-direction, and interactive communication. Metiri Group, *Twenty-First Century Skills*, N.Y. STATE UNITED TEACHERS, 2-3.<sup>12</sup>

California recognizes that distance learning helps assure “[q]uality in education.” Section 51865(b)(2). Scholars agree. Nonclassroom-based schools offer students substantial curricular flexibility and access to highly qualified teachers in hard-to-staff subjects or hard-to-staff urban and rural schools.

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<sup>12</sup> [Http://www.nysut.org/~media/files/nysut/resources/2013/april/21centuryskills000.pdf?la=en](http://www.nysut.org/~media/files/nysut/resources/2013/april/21centuryskills000.pdf?la=en).

Heather Grinager, *How Education Technology Leads to Improved Student Achievement*, NAT'L CONFERENCE OF STATE LEGISLATURES, EDUCATION ISSUES 4 (Nov. 2006).<sup>13</sup> It provides all students the opportunity to take a rigorous curriculum, regardless of their school's ability to recruit and retain teachers. *Id.*

With nonclassroom-based instruction, student success does not depend on the random good fortune of always being assigned to teachers who are both content experts and skilled learning facilitators. Once an interactive lesson or online course has been developed according to evidence-based design principles and academic content standards—and proven to be effective—it can be made available to any student. Nat'l Ass'n of State Bds. of Educ., *Any Time, Any Place, Any Path, Any Pace: Taking the Lead on e-Learning Policy* 10 (2001) (NASBE).<sup>14</sup> Students of any background, in a well-run “networked learning community,” can access the best educational resources from across the globe at any time of the day and year. *Id.* Through distance learning and nonclassroom-based pedagogy, high-quality instructional services can be provided to all learners regardless of location, family or cultural background,

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<sup>13</sup> <https://www.ncsl.org/portals/1/documents/educ/item013161.pdf>.

<sup>14</sup> <http://onlineschool.cusd.com/calonline/programinfo/reports/2001nasberpt.pdf>.



or disability. *Id.* at 27; *see* SSSH's Online Resources (providing several online learning support options).<sup>15</sup>

Nonclassroom-based instruction utilizing computers and telecommunications technologies enhance student achievement in many ways. Students of every grade level become active participants in meaningful learning experiences simply by using computers and educational software. Grinager, *supra*, at 7. Because instructional software is an “infinitely patient, nonjudgmental, one-on-one teacher,” it allows students to proceed through a topic at their own pace and repeat lessons whenever necessary until mastery is achieved without classroom distractions, peer pressure, or bullying. NASBE, *supra*, at 11; Vanourek, *supra*, at 5. Students preparing for rigorous college entrance exams find that their task is easier with SAT/ACT preparation software. NASBE, *supra*, at 11.

The Legislature recognizes that distance learning promotes efficiency, increases accountability, and reduces educational costs. Section 51865(b)(4). A technology-integrated educational delivery system allows for the electronic transmittal of files and reports, thus providing the information needed for accountability more rapidly and at a lower cost. *Id.*; *see* Gillian Locke, *et al.*, *Virtual Schools: Assessing Progress and Accountability Final Report of Study Findings*, NAT'L CHARTER SCH. RES. CTR., 14 (Feb. 2014) (“Virtual schools

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<sup>15</sup> [Http://www.shastacharteracademy.org/#!/learning-resources/cjxx](http://www.shastacharteracademy.org/#!/learning-resources/cjxx).

may be able to track, collect, and report information on student engagement” better than is possible in traditional brick-and-mortar schools.).<sup>16</sup>

**B. SSHS Maximizes the Advantages and Minimizes Disadvantage of Nonclassroom-Based Schools Through Use of Resource Centers**

Each of SSHS’s resource centers are crucial for student achievement. An important benefit of distance learning is the “ability of teachers to focus their time and expertise on individual student progress, challenges, and learning styles, instead of adjusting their instruction to fit the ‘middle’ of the classroom.” Vanourek, *supra*, at 6. If there is a disadvantage to distance learning it may be the lack of daily face-to-face interactions between students and teachers. *Id.* SSHS maximizes the benefit of distance learning by utilizing “an individualized learning model of education.” *Anderson Union High Sch. Dist.*, slip op. at \*8. Of particular relevance here, the Charter Academy minimizes the disadvantage of distance learning by requiring regular face-to-face interactions between facilitators, students, and parents or legal guardians at its resource centers. *Id.*

The presence of a local facilitator has a significant positive impact on student success in distance learning schools. Some researchers have called facilitators “crucial to the success” of distance learning. Michael Barbour & Dennis Mulcahy, *The Role of Mediating Teachers in Newfoundland’s New*

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<sup>16</sup> [http://www.charterschoolcenter.org/sites/default/files/files/field\\_publication\\_attachment/Virtual%20Schools%20Accountability%20Report\\_0.pdf](http://www.charterschoolcenter.org/sites/default/files/files/field_publication_attachment/Virtual%20Schools%20Accountability%20Report_0.pdf).

*Model of Distance Learning*, THE MORNING WATCH, 32, Nos. 1-2 (2004);<sup>17</sup> see NEPC, *supra*, at 43 (a local facilitator has “a significant impact with online student success”).<sup>18</sup> For nonclassroom-based students in rural areas, the presence of a facilitator at local sites to offer support and guidance is especially important. See Barbour & Mulcahy, *supra* (the support provided by local facilitators to distance learners in rural areas is “crucial if students are to have any chance to succeed”). Thus, nonclassroom-based schools featuring distance learning assure successful student outcomes by utilizing resource centers.

SSHS resource centers are used principally to facilitate independent study which includes distance learning. At each resource center, a facilitator meets with a student and student’s parent or guardian, and then designs an individualized plan for the student’s education. This leads to a Master Agreement signed by the student, student’s parent or guardian, and facilitator. As the court below found, once every twenty days the students of SSHS are then required to meet with the student’s facilitator at one of the resource centers. The purpose of the meeting is to review an individual student’s work, assign new curriculum as part of the individual student’s independent study plan, administer tests to the individual student, and assist students individually

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<sup>17</sup> [Http://www.mun.ca/educ/faculty/mwatch/fall4/barbourmulcahy.htm](http://www.mun.ca/educ/faculty/mwatch/fall4/barbourmulcahy.htm).

<sup>18</sup> [Http://greatlakescenter.org/docs/Policy\\_Briefs/Molnar\\_VirtualSchools2014.pdf](http://greatlakescenter.org/docs/Policy_Briefs/Molnar_VirtualSchools2014.pdf).

with course work as needed. *Anderson Union High Sch. Dist.*, slip op. at \*10. The parent or guardian must be present at the required 20-day meeting. Obviously, parents and students can more easily attend this meeting when the resource center is located near them. The termination of the Cottonwood resource center would be detrimental to the mission of SSHS and their students who receive support.

The State's educational policies, goals, and objectives concerning nonclassroom-based charter schools, like SSHS, are supported by scholarly research. A ruling by this Court that adversely affects the operation of SSHS will negatively impact the education of students in Shasta County, and may also provide legal precedent that may be used to attack other charter schools.

### **CONCLUSION**

Anderson can best resolve its perceived problems of lost funding and student control by improving the educational opportunities at its schools. The intent of the Legislature in enacting the Charter School Act was to “[p]rovide vigorous competition within the public school system to stimulate improvements in *all* public schools.” Section 47601(g) (emphasis added). If Anderson feels threatened by SSHS, or any other charter school, the legislature does not expect Anderson to waste resources by litigating. Rather, Anderson's proper recourse is to vigorously compete and improve the educational opportunities for its students.

To best achieve the ultimate goal of “improv[ing] pupil learning,” *id.* at section 47601(a), this Court should affirm the ruling of the court below and allow SSHS to continue operating its Cottonwood resource center.

DATED: December 4, 2015.

Respectfully submitted,

RALPH W. KASARDA  
JOSHUA P. THOMPSON

By           /s/ Ralph W. Kasarda            
RALPH W. KASARDA

Attorneys for Amicus Curiae  
Pacific Legal Foundation

**CERTIFICATE OF COMPLIANCE**

Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the foregoing APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF DEFENDANT AND RESPONDENT is proportionately spaced, has a typeface of 13 points or more, and contains 4,346 words.

DATED: December 4, 2015.

/s/ Ralph W. Kasarda  
RALPH W. KASARDA

## **DECLARATION OF SERVICE**

I, Ralph W. Kasarda, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 930 G Street, Sacramento, California 95814.

On December 4, 2015, a true copy of APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF DEFENDANT AND RESPONDENT was electronically filed with the Court through truefiling.com. Notice of this filing will be sent to those below who are registered with the Court's efilings system. Those who are not registered will receive a hard copy via first-class U.S. Mail, postage thereon fully prepaid, and deposited in a mailbox regularly maintained by the United States Postal Service in Sacramento, California.

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I declare under penalty of perjury that the foregoing is true and correct  
and that this declaration was executed this 4th day of December, 2015, at  
Sacramento, California.

/s/ Ralph W. Kasarda  
RALPH W. KASARDA