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May 16, 2023

**VIA E-MAIL (MFOX@OHHLEGAL.COM)**

Marley S. Fox  
Orbach Huff & Henderson  
1901 Avenue of the Stars, Suite 575  
Los Angeles, CA 90067

Re: Response to Wiseburn's Unlawful Attempt to Terminate Facilities Use Agreement ("FUA") for 201 N. Douglas St., El Segundo, CA 90245 ("High School Site"); Demand for Wiseburn to Cease and Desist

Dear Counsel:

I write on behalf of Da Vinci Schools ("DV") in response to a letter received by DV on May 9, 2023 from the Wiseburn Unified School District ("Wiseburn" or "District") Superintendent responding to my March 1, 2023 letter. Based on your phone call to me on March 16, 2023 and our subsequent email communications, I had understood you represent the District as to the FUA between DV and Wiseburn and would be responding to my letter on the District's behalf. However, in light of Wiseburn's recent correspondence to DV directly, please let me know if my understanding of your representation is not accurate so that I may redirect this communication.

Wiseburn's May 9, 2023 correspondence purports to be a "Notice of Termination of the Facilities Use Agreement dated May 14, 2015 for Non-Cause." To be clear, **the District's attempted termination is unlawful and has no effect**. DV demands the District immediately cease and desist its unlawful attempted termination of the FUA. DV is prepared to take all necessary legal actions to protect its continued right to use the High School Site for the benefit of the DV high school students and families.

As described in further detail below, the FUA is a legally binding, long-term contract that remains in effect currently and beyond July 1, 2023. Since the parties entered into the FUA in 2015, there has been a change in leadership at the District that now seeks increased "management and control" over the high schools and the High School Site. To achieve these new goals, the District has

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manufactured a right to terminate the FUA that does not exist. Wiseburn cites a purported “impasse” regarding construction of the CTE Studio, but the CTE Studio is plainly covered by the FUA and is merely a pretext being used by the District to escalate into its manufactured termination of the FUA.

DV has long recognized the District as the schools’ partner in education, but DV cannot accede to the District’s unlawful and unilateral demand to turn the existing long-term FUA into a short-term use agreement or Proposition 39 one-year deal. The term of the FUA is forty years with automatic extensions upon charter renewal and further options for renewal. This is unambiguously described in Section 3.1 of the FUA—a term negotiated and agreed-to by both the District and DV. While DV understands that current individuals at Wiseburn seek contract terms that allow for greater District “management and control” over DV and the High School Site, the parties are bound by the long-term contract agreed to and executed by DV and the District in 2015.

The FUA contains no provision that would allow Wiseburn to unilaterally terminate the FUA without cause effective July 1, 2023. Superintendent Silvers cites to Section 3.5 of the FUA; however, Section 3.5 of the FUA is very clear that the District has the limited right to terminate the FUA *for cause only*:

“As long as Da Vinci is complying with the terms of this Agreement, the Charter of any school occupying the high school facilities and all applicable laws and regulations allowing for Da Vinci’s (and its charters’) rights to cure any such noncompliance in accordance with the procedures and timelines, and meeting the performance criteria described in Exhibit E and in Section 11.1 of this Agreement, this agreement will not be terminated. The Agreement may only be terminated if Da Vinci is not complying with the terms of this Agreement, and/or not complying with its Charter and/or not complying with all applicable laws and regulations and/or failing to meet the performance criteria described in Exhibit E, subject to the one-year cure periods set forth in Exhibit E and in Section 11.1 of this Agreement. Both District and Da Vinci Schools agree that good/great Da Vinci Schools, should never be homeless.”

This language plainly conveys the parties’ agreement that DV remain in the facility except in the event of limited defined circumstances providing “cause” for the agreement to be terminated. The sentence that good/great DV schools should never be homeless further stresses the sentiment of the parties with respect to DV students having the right to use the High School Site.

Section 3.5 contains further language regarding DV’s rights to terminate the FUA:

“Da Vinci will provide a five-year notice if it chooses to vacate the High Schools Facility and terminate the 40-year lease agreement, as to all of its schools. In the event of termination of the Agreement for non-cause, the District will comply with Education Code section 47614 and the Proposition 39 regulations (CCR, Title 5, Section 11969.9) or any successor law or regulation regarding any provision of facilities for Da Vinci Design, Da Vinci Communications, and Da Vinci Science charter schools.”

This language protects the District by requiring five years of advanced notice in the event DV sought to move to another site. The reference to termination of the FUA for non-cause confirms that in the event of any such move by DV, the District will comply with its obligations under Proposition 39.

It is inconceivable that Superintendent Silvers would read Section 3.5 to mean that Wiseburn may unilaterally terminate the FUA at any time, for any reason whatsoever, and without any advance notice. Such interpretation of the FUA is wholly unsupported by Section 3.5 and is contrary to the FUA's clear and express term length.

In response to concerns raised by a member of the public at Wiseburn's Board of Education meeting on May 11, 2023, comments were made by a District Trustee that the District is only doing what the parties agreed to do in the FUA, which is to revisit and review the FUA every ten years or as necessary. The Trustee reassured the public that:

"There is a provision in that agreement that states that we should be revisiting the documents within 10 years or a mutually agreed period between.. I think we're pretty much there. We're right at that stage, and I really look forward to continuing that dialogue with Da Vinci, and the colleagues here on the Wiseburn Board, to develop a new agreement that's going to allow us to continue to move forward, that's in the best interest of all of our students and the community that we serve..."

In the most generous light, the Wiseburn Trustee's characterization of the District's actions lacks credibility. Viewed another way, it appears to be a direct attempt to mislead the public. Section 3.6 of the FUA provides that "The FUA will be revisited and reviewed every ten years or as necessary by an ad hoc subcommittee consisting of an equal number of members from each board and staff leadership. The terms of the current agreement can be amended only by a majority vote of the Da Vinci Board of Trustees and a majority vote of the District Board of Trustees." The District Trustee neglected to mention that Wiseburn had already provided DV with a letter attempting to unilaterally terminate the existing FUA in its entirety. The Trustee further avoided the inconvenient truth that the FUA expressly conditions any changes to the FUA on *mutual agreement by both DV and Wiseburn*. Superintendent Silvers' letter is not an invitation for dialogue as the District Trustee suggested to the public; it is an illegal attempt to evict DV students (which are Wiseburn's own resident students) from the High School Site that was constructed for their DV schools.

Superintendent Silvers' letter also fails to recognize that because the High School Site was constructed with funding under the Charter School Facilities Program, DV's rights to continued use of the facility go beyond just the FUA. DV has contractual rights under the tri-party Charter School Facilities Program Memorandum of Understanding between the State Allocation Board/California School Finance Authority, DV, and Wiseburn ("MOU"). DV also has statutory rights under Education Code section 17078.62(a) to continue using the facility until it is no longer needed for DV's purposes. Superintendent Silvers' letter fails to address any of these.

Aside from the fact that the District's attempted termination of the FUA is illegal and ineffectual, it is extraordinarily troubling to DV that Wiseburn would even seek to jeopardize the long-term security of the high schools and their students for the sake of increased "management and control" as cited by Superintendent Silvers. Superintendent Silvers' letter points out that the funding for the High School Site would not have been available to DV without the District, but he fails to note that the funding (which is entitled the *Charter School Facility Program*) would not have been available to the District without the DV schools. Perhaps most troubling, Superintendent Silvers'

letter seems to assume that state education funding belongs to the District, when in fact each of the parties are merely stewards of funds for their public school students.

Following his unlawful “Notice of Termination” of the FUA, Superintendent Silvers sent a District-wide email communication to staff on May 15, 2023 announcing that the District intends to displace DV by operating a District-run high school at the High School Site. The email also included a link to the District’s website. Superintendent Silvers’ announcement was published less than a week after the District sprung the unlawful “Notice of Termination” on DV, even though it took the District *more than two months* to respond to my last letter. It was hastily published even though the District had publicly acknowledged on May 11, 2023 that DV was in the process of reviewing the District’s recent correspondence about the FUA and preparing a response.<sup>1</sup> It was also sent without any communication to DV even though the District had assured the public on May 11, 2023 that DV and the District were in “dialogue.”<sup>2</sup> The outrageous announcement amounts to disingenuous posturing: there is no basis whatsoever in law or contract for the District to evict the DV high schools from the High School Site and then use the facilities for a District high school program that does not yet exist. The DV high schools serve as the District’s own high schools of residence. (Agreement between Wiseburn and DV Regarding Allocation of Education Expenses [“Da Vinci assumes primary responsibility for the cost of providing an educational program for...all students in Grades 9-12 who are eligible for District enrollment...”]; District Website, “About Wiseburn Unified School District” webpage [“Da Vinci Design, Da Vinci Communications and Da Vinci Science serve as Wiseburn Unified School District’s “home” high schools and Wiseburn residents are guaranteed a placement at one of the schools.”].) In addition to the long-term use rights under the FUA, the three DV high schools located at the High School Site have priority rights to that site pursuant to the tri-party MOU with the State as well as the provisions of law in Education Code section 17078.62.

It is not lost on DV that the District holds title to the High School Site as trustee, and DV has never asserted otherwise. Indeed, DV has continued to seek Wiseburn’s cooperation as both titleholder and grant partner in completing the CTE Studio project for the benefit of our shared students. Wiseburn requested months ago that the FUA be supplanted by a short-term facility agreement for the CTE Studio. DV respectfully declined, explaining that 1) the CTE Studio is already covered by the FUA, 2) there is insufficient benefit to students to piecemealing new buildings at the High School Site into new shorter-term agreements, and 3) a short-term facility use agreement would destabilize the high schools that are attended by over 1,500 students every day.

DV has continued to invite the District to cooperate with DV so that the CTE Studio can be built for the benefit of students. Instead, the District now seeks a new approach to declare an “impasse” on the CTE Studio project, and convert the FUA into a short-term agreement by strong-arming DV with a purported and unlawful “Notice of Termination.” Such illegal conduct destabilizes the parties’ relationship. It harms the rights of families who rely on the FUA, wastes valuable resources that should be spent in the classroom, and distracts from the issue at hand: whether the District will or will not cooperate to use available state funding to build a state-of-the-art CTE Studio

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<sup>1</sup> (Video from the May 11, 2023 District Board of Education Meeting, starting around 59:30.)

<sup>2</sup> (Video from the May 11, 2023 District Board of Education Meeting, first time around 59:06.)

for students. DV once again respectfully submits that the answer to that question should not hinge on the District's ability to "fully manage and control" DV and the High School Site.

The High School Site was unquestionably constructed to serve as the long-term home of the DV high schools.<sup>3</sup> Among other things, the purpose of the FUA's forty-year term with automatic extensions was to avoid the instability of a shorter term. The entirety of the site, including the CTE Studio, is covered by the FUA.

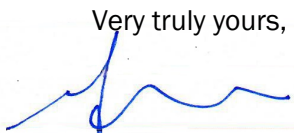
In closing, DV seeks to remind the District of the "Da Vinci Wiseburn Magna Carta." The Magna Carta was executed by the parties at a time when the District, like DV, expressly understood and agreed that working together in good faith would benefit the entire Wiseburn community. The parties remain bound by the Magna Carta, which provides:

"The relationship between the Wiseburn Unified School District (WUSD) and Da Vinci Schools (DV) can best be described as a partnership built on trust, integrity and mutual support, with a mission-aligned focus on doing what is in the best interest of students and the families we serve."

"WUSD and DV are highly cooperative, collaborative, and highly inter-dependent, but the DV charter schools operate as independent charter schools to take advantage of a high degree of flexibility and creative opportunities available in the charter world."

"We do not engage in activities or pursue outcomes that diminish or harm either organization."

The DV high schools will continue operating at the High School Site pursuant to the FUA. In the event DV is forced to take legal action against the District to enforce its rights under the FUA, the MOU, and the law, DV will seek to recover its attorneys' fees and other costs from the District in accordance with Section 4.2(G) of the MOU and law.

Very truly yours,  
  
Greta A. Proctor

GAP

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<sup>3</sup> FUA, § 3.1 [the term of the FUA is "evergreen"]; FUA § 3.5 ["Both District and Da Vinci Schools agree that good/great Da Vinci Schools, should never be homeless"]; MOU § 4.2 [in the event of default, the DV high schools retain priority rights to use the High School Site]; Magna Carta, p. 9 ["Wiseburn High School is the name of the facility that will exclusively house the three DaVinci High Schools"]; Magna Carta, p. 10 ["This Magna Carta represents an understanding that both organizations are entering into a unique partnership. The high school facility at 201 Douglas is emblematic of this partnership"].