

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY**

Sandoval, Jose Andres) 21CV000070
vs.) Ruling on Petition for Writ of Mandate
Raul Rodriguez, in his official capacity as)
Superintendent/President of Hartnell, et al.)

This matter came before the court for hearing on December 20, 2021. At the conclusion of counsels' arguments, the court determined that Mr. Augustine Nevarez should have the opportunity to intervene if he so chooses. Mr. Nevarez was given until January 27, 2022 to file a Response. That date has now passed, and no Response has been filed. The Court deems the case to be now submitted for ruling and hereby issues the following decision.

This Petition for Writ of Mandate is brought by Petitioner to enforce his right to receive public records from Respondents, including Raul Rodriguez, Superintendent/President of Hartnell Community College ("Hartnell"), and others, under the California Public Records Act (CPRA).

As alleged in the Petition, Hartnell's Director of Student Affairs, Augustine Nevarez, was once the Board President at Oasis Public Charter School ("Oasis"). During his tenure as Oasis Board President, Petitioner lodged complaints against Oasis officials that resulted in fines levied against Oasis executive director for conflict of interest violations, among other things.

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3 As for Nevarez, Petitioner alleges he conducted business on Oasis' behalf using
4 his Hartnell email account and resources available to him through his employment with
5 Hartnell College. Petitioner seeks the emails to and from Oasis that were made over a
6 specified period and are stored on Hartnell's server. Separately, Petitioner seeks
7 disciplinary and investigative records relating to Nevarez's activities as an employee of
8 Hartnell.
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10 **Oasis E-mails**

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12 Respondents contend that the emails are not public records under the public
13 records act for which Hartnell should be responsible because they do not reflect the
14 business of Hartnell. It is claimed they were simply Nevarez's personal records, citing
15 *City of San Jose v. Superior Ct. (2017) 2Cal.5th 608*.
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17 Petitioner responds that because Oasis conducts the public's business, records
18 relating to Oasis are public records. As a public charter school that receives and
19 spends public funds and is part of the state's public schooling system, there is no
20 difference between Oasis and any other public school. Furthermore, he points out that
21 the emails were sent to and from a Hartnell owned email address, were sent using
22 Hartnell resources and are stored on servers of email accounts Hartnell owns or
23 controls.
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1 The Court finds that Hartnell's claim that the Oasis emails are not public records
2 is not well taken and its reliance on *City of San Jose, supra*, is misplaced. The CPRA
3 defines a "public record" as "any writing containing information relating to the conduct of
4 the public's business prepared, owned, used, or retained by any state or local agency
5 regardless of physical form or characteristics." (Govt. Code Sec. 6252 (e)). The CPRA
6 includes any writing that is "retained" by a state or local agency. In the *City of San*
7 *Jose*, the court did not hold that a record becomes personal and not related to the
8 conduct of the public's business simply because it pertains to the business of a different
9 entity from the entity that is receiving the CPRA records request (i.e. whether it relates
10 to Hartnell's business as opposed to Oasis's business). Rather, the California Supreme
11 Court established that any record—even those held within a personal account—can be
12 subject to disclosure so long as it relates to the conduct of the public's business. The
13 location of the records is irrelevant. It is the nature of the records themselves that
14 determines if they relate to the public's business.

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18 Respondents next argue that Education code Sec. 47604.1, which states that
19 charter schools shall be subject to the Public Records Act, was not passed until 2020,
20 after Petitioner's request for records was denied. It is argued that this shows that such
21 schools were not subject to the act before that time.

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23 This court agrees with Petitioner's contention that sec. 47604.1 merely restated
24 already existing law that rendered charter schools subject to the CPRA. Once again,
25 the CPRA defines a public record as "any writing containing information relating to the
26 conduct of the public's business..." An opinion of the California Attorney General,
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1 although not binding on the court, lays out persuasively the reasons supporting this
2 conclusion. (101 Ops. Cal. Atty. Gen. 92 (2018). Furthermore, the California Supreme
3 Court has stated that “[o]nce approved, charter schools are operated independently, but
4 are subject to public oversight.” (*Today’s Fresh Start, Inc. v. Los Angeles Cty. Off of*
5 *Educ.* (2013) 57 Cal.4th 197, 206.) “Such public control and oversight...legitimize[s]
6 charter schools [citation] and arguably is constitutionally necessary [citations].” (Ibid.)
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9 Nevarez’s Disciplinary and Investigative Records from 1/1/18-9/8/20

10 As noted above, Mr. Nevarez was granted an opportunity to respond and raise
11 any objection he wished to disclosure of the records sought. He has not done so.
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13 Hartnell raises an objection to disclosure of these records, claiming they are
14 exempt under Govt. Code sec. 6254 (c), which protects personnel records that
15 constitute an unreasonable invasion of personal property. In order to overcome this
16 claimed exemption, Petitioner must show that (1) the documents sought must be about
17 well-founded complaints, and (2) the documents must be about complaints that are
18 substantial in nature. (*Marken v. Santa Monica-Malibu Unified Sch. Dist.* (2012) 202
19 *Cal.App.4th* 1250, 1274).
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22 The court notes that Nevarez held a relatively high-ranking position as Hartnell’s
23 Director of Student Affairs and there is a sufficient showing that describes activity that
24 raises significant concerns. Under these circumstances, the personnel exemption is
25 overcome.
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1 Hartnell raises an Attorney-Client Privilege and Attorney Work Product Doctrine
2 exemption. The court finds this claim generally well taken. Hartnell's objection to the
3 contents described in Exhibit A to its brief are protected from disclosure. The remaining
4 documents shall be disclosed.
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6 Finally, Hartnell raises the "Catch-all Exemption" under Govt. Code sec. 6254,
7 allowing the court to allow nondisclosure where the proponent of this exemption has
8 shown a clear overbalance on the side of confidentiality. Such a clear showing has not
9 been made and that exemption is denied.
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12 The Petition for Writ of mandate is granted in conformance with the above ruling.
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14 The hearing previously set for February 14, 2022, is vacated.
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17 Date: Feb. 7, 2022
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SUPERIOR COURT JUDGE

CERTIFICATE OF MAILING
(Code of Civil Procedure Section 1013a)

I do hereby certify that I am employed in the County of Monterey. I am over the age of eighteen years and not a party to the within stated cause. I placed true and correct copies of the **Ruling on Petition for Writ of Mandate**, for collection and mailing this date following our ordinary business practices. I am readily familiar with the Court's practices for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Services in Monterey, California, in a sealed envelope with postage fully prepaid. The names and addresses of each person to whom notice was mailed is as follows:

Chad D Morgan
1101 California Avenue
Suite 100
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Salinas CA 93901

Date:

2/1/22

Clerk of the Court,

By:



Elise Mouisset, Deputy Clerk