

SPECIAL MEETING
November 26, 2019
6:00 p.m.
Board Room
200 Kalmus Drive, Costa Mesa, CA

ORANGE COUNTY BOARD OF EDUCATION
AGENDA
Special Board Meeting

WELCOME

CALL TO ORDER

STATEMENT OF PRESIDING OFFICER: For the benefit of the record, this Special Board Meeting of the Orange County Board of Education is called to order.

PLEDGE OF ALLEGIANCE

ROLL CALL

(*) AGENDA

Special Meeting of November 26, 2019 - adoption

INTRODUCTIONS

PUBLIC COMMENTS

(30 minutes)

CLOSED SESSION 1

CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION
Orange County Board of Education v. OC Superintendent of Schools,
Case No 30-2018-01023385-CU-MC-CJC Government Code §§
54956.9(a) and (d)(1)

CLOSED SESSION 2

CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION
Orange County Board of Education v. OC Superintendent of Schools, Al
Mijares, and State Superintendent of Public Instruction, Tony Thurmond
Case No 30-2019-01112665-CU-WM-CJC -Government Code §§
54956.9(a) and (d)(1)

CLOSED SESSION 3

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED
LITIGATION
Discussion of risk mitigation options in light of significant exposure to
litigation in the opinion of legal counsel pursuant to (d) (2) of Government
Code §54956.9

LEGAL COUNSEL UPDATE

1. Update on California Department of Education Budget Committee Approval Process

BOARD ACTION

2. Approval of Board Statement for public posting on website
3. Approval of public posting on web site: Petition for Writ of Mandate and Complaint for Declaratory and Injunctive relief-Orange County Board of Education v. OC Superintendent of Schools, Al Mijares, & State Superintendent of Public Instruction, Tony Thurmond Case No 30-2019-01112665-CU-WM-CJC
4. Without waiver of any claims or legal positions, approve Budget Committee members pursuant to California Education Code §1623.

PUBLIC COMMENTS (15 minutes)

ADJOURNMENT



Nina Boyd
Assistant Secretary, Board of Education

Individuals with disabilities in need of copies of the agenda and/or the agenda packet or in need of auxiliary aides and services may request assistance by contacting Darou Sisavath, Board Clerk at (714) 966.4012.

Statement from the Board Regarding Budget Dispute and Litigation November 26, 2019

At a special meeting on October 7, 2019, the Orange County Board of Education (the “Board”) made a decision to engage the law firm Epstein Becker & Green, P.C. to pursue appropriate litigation in response to Superintendent of Schools Al Mijares’ (“Mijares”) refusal to submit the Board’s adopted budget, and the State Superintendent of Public Instruction Tony Thurmond’s (“Thurmond” or “SPI”) refusal to evaluate the Board’s budget, which the Board submitted pursuant to the Education Code. This decision was not made lightly, and it came only after repeated efforts by the Board’s Executive Committee and counsel to engage, discuss, and reach an accord with the state and Superintendent Mijares over the budget and the spending reductions to lobbying and staff travel expenses that the Board approved on two separate occasions.

The Education Code mandates and authorizes the Board to adopt a budget each year, and to file that budget with, among others, the SPI, in a format prescribed by the SPI. The current format prescribed by the SPI allows for either the Board Secretary or the Board clerk to sign and certify the Board-adopted budget. Nowhere in the Education Code is a county superintendent given the power to approve or disapprove of the Board’s budget. Rather, final and exclusive authority to approve and adopt the annual budget is vested in the Board. Following the filing of the budget to the State Superintendent, the State Superintendent is required to examine the budget under specific criteria outlined in Education Code section 1622, and approve or disapprove the budget.

The Board adopted a budget on June 26, 2019, and re-adopted the budget on August 1, 2019. The Board’s budget cut approximately \$170,000 from Mijares’ proposed level of spending for lobbying, travel, and conferences, which the Board felt were unnecessary expenditures and not sufficiently beneficial uses of taxpayer funds. Pursuant to his position as Secretary to the Board and Superintendent of Schools for Orange County, Mijares was required to sign and submit the Board-adopted budget to the State of California. Despite repeated requests and even a formal Board resolution directing Mijares to sign and submit the budget, he refused, and continues to refuse, to do so. The Board then filed its adopted budget with the SPI with the signature of the Board’s nominated clerk, Lisa Sparks.

However, Thurmond purported to reject the Board’s submitted budget, on the basis that the budget was not signed by Mijares as Board Secretary or submitted by him as county superintendent. This in spite of the fact that no provision of California law requires a county superintendent to sign the Board’s budget or authorizes the SPI to impose such a condition or reject a budget because such a condition is not met. Thurmond’s purported rejection of the Board’s budget was not for any of the reasons enumerated in Education Code section 1622, and effectively gave Mijares veto power over the Board’s ability to adopt a budget. Perhaps not surprisingly, Mijares has used that power to refuse to sign or submit the Board’s budget that reduces spending on Sacramento lobbyists and board and administrative staff travel.

The Board takes its duty to adopt a fiscally sound budget for the Orange County Department of Education very seriously. The Board also takes its authority to approve the budget and to help ensure the proper exercise of fiscal discipline and responsibility at the Department just as seriously. While the Board of course would prefer to solve this issue outside of litigation, and

will continue to attempt to do so, it also will seek to protect its legal rights and authority with respect to the Department's budget.