

Board Resolution on Adopted 2019-2020 OCDE Budget

October 16, 2019

Whereas, in February and June 1977, the Orange County Board of Supervisors passed resolutions delegating its budgetary oversight authority to the Orange County Board of Education (the "Board"), and establishing the Board and the County Superintendent as "fiscally independent"; *and*

Whereas, at the May 2019 regular board meeting, the Board held a budget study session for the 2019-2020 Orange County Department of Education ("OCDE") fiscal year; and on June 12, 2019, the Board held a Public Hearing on the Superintendent proposed 2019-2020 Budget, as well as a discussion on the same budget with staff; *and*

Whereas, at its June 26, 2019, meeting, the Board approved and adopted the proposed 2019-2020 OCDE budget (the "Budget") submitted to the Board by Al Mijares, County Superintendent of Education (the "Superintendent") with approximately \$170,000 in cost reductions for travel, conference, and lobbying expenditures; *and*

Whereas, per state Education Code 1010, the Superintendent is Secretary to the Board, which is an ex-officio non-voting position of the Board. As the non-voting Board Secretary, the aforementioned Education Code obliges the Superintendent to carry out the ministerial and administrative duties reserved for that position at the direction and request of the Board; *and*

Whereas, state Education Code section 14050 provides in relevant part: "The county superintendent of schools shall on or before June 30 of each year submit a tentative budget and, on or before October 1 of each year, a final budget to the Superintendent of Public Instruction, and

Whereas, state Education Code 17340 addresses the requirement of submitting the Budget. *"The county superintendent shall, on or before June 30 of each year, submit to the Superintendent of Public Instruction (SPI) a proposed budget as approved by the county board of education for the succeeding fiscal year, on forms prescribed by the Superintendent of Public Instruction, pursuant to the provisions of Section 14050 of the Education Code.*

Whereas, subsequent to the adoption of the OCDE budget at the June 26, 2019, Board meeting, there was no contact or communication by the Superintendent to the Board's Executive Committee, or to the Board's special interim legal counsel regarding the Budget until the July 10, 2019, Board meeting; *and*

Whereas, at the July 10, 2019 regular Board meeting, the Board learned that the Superintendent did not sign the Board adopted 2019-2020 Budget, or send it to the SPI at the California Department of Education ("CDE"). The Superintendent told the Board at this meeting that because his proposed budget was amended by the Board at the June 26 meeting, that the Board-adopted Budget on June 26, 2019, needed a new public notice, public hearing, and budget document with the adopted budget reductions included. The Superintendent told the Board in open session he would help prepare the proper document to be sent to the SPI; *and*

Whereas, on July 19, 2019, the Superintendent sent a memo to the Board reversing his earlier statement that he would assist in producing the new Budget document for a further notice and public hearing process. He informed the board in this memo he would not help the Board construct a new budget (or any other budget variances from his proposed Budget) that included the budget reductions made at June 26, 2019 Board meeting; *and*

*Whereas, in the aforementioned July 19th memo, the Superintendent stated he "...will **not** agree to amend the budget and will **not** be providing a modified budget reflecting the changes by the Board. In June 2019, I submitted to the board a fiscally sound budget. I am requesting the board reconvene a meeting to approve the 2019-2020 budget I already submitted to the board for public hearing and adoption. If the board does not accept the budget as submitted, takes action to modify the budget, or does not act, I will accept that as the board's refusal to adopt the 2019-2020 Budget and act accordingly"; and*

Whereas, at the July 19, 2019 meeting the Board's majority disagreed with the Superintendent's interpretation of education statutes that a new notice and meeting were required. In order to address and remove the technical issue raised by the Superintendent, the Board lawfully noticed and conducted a special meeting and public hearing on August 01, 2019 regarding the adopted June 26th Budget. Notice of the meeting and the Budget was properly and timely posted in advance. At the August 01, 2019 special meeting, the Board held a public hearing on the Budget, and subsequent to the Public Hearing, the board re-adopted the Budget previously adopted on June 26, 2019; and

Whereas, the state budget template provided by the SPI provides for signatures on the Budget document. There are two (2) signatures that are recognized on the SPI supplied template as the Board Clerk and/or the Board Secretary. For the purpose of affixing an official signature to the Budget, and in the event the Superintendent would not cooperate in signing the budget and sending it to the SPI, the Board per state Education Code 1040 (a) appointed Trustee Lisa Sparks as Board Clerk, at the August 01, 2019 special meeting; and

Whereas, on August 05, 2019, special interim Board legal counsel, Greg Rolen, sent an email to Superintendent requesting he affix his signature to the adopted Budget. The email read as follows: "On behalf of the Orange County Board of Education we request that you sign the Budget Book which reflects the budget which was adopted on June 26, 2019, and re-adopted on August 1, 2019. Pages 3 and 7 require the signature of the "Board Secretary" or "Board Clerk." My understanding is that you are currently the Board Secretary, and that in the past you have signed the Department of Education's prior annual budgets in that capacity and forwarded it to the State Superintendent of Public Instruction. Accordingly, we request you do so again with respect to this budget. Please confirm by reply email that you will do so, and please send either me or Board President Barke a copy of the signed Budget Book and your transmittal to the State Superintendent for our records. The Board would like to submit this by August 7, 2019; and

Whereas, no communication or agreement was received from the Superintendent in response to Mr. Rolen's August 05, 2019 email, or otherwise to indicate that the Superintendent would, as Board Secretary, follow the Board's request that he affix his signature to the June 26, 2019 adopted, and August 01, 2019 re-adopted Budget. Accordingly, on the August 11, 2019, Trustee Sparks, as Board Clerk, affixed her signature to the document, and the Budget was officially submitted to the SPI by special interim legal counsel on behalf of the Board, along with a separate detailed analysis and summary of the 2019-2020 OCDE Budget adoption process; and

Whereas, the Superintendent previously did not submit the 2019-2020 annual budget that the Board adopted on June 26 and August 1, 2019, but rather he submitted his originally proposed 2019-2020 budget to the SPI. His proposed budget lacked Board approval and was not accepted by the SPI; and

Whereas, on August 30, 2019 the California Department of Education (CDE) and SPI sent an email informing the Board that the CDE was rejecting the budget as submitted because: 1)

Under California *Education Code (EC)* Section 1010, “*The county superintendent of schools is ex officio secretary and executive officer of the board*” and his signature was not affixed to the Budget, and 2) The Board Clerk lacked the ability to sign the SPI template on pages 3 and 7, and thus the Budget had not been properly submitted to the SPI; *and*

Whereas, on September 4, 2019, Mr. Rolen sent a response to the CDE and SPI, taking issue with the CDE’s and SPI’s conclusions that the Budget could not be approved by the CDE unless the Superintendent as ex-officio Secretary to the Board had signed and submitted the budget; and

Whereas, at the request of the CDE, the Executive Committee and Superintendent engaged in compromise discussions relating to the annual budget for over a month. To date, those discussions and negotiations have not resulted in an accord; and

Whereas, on October 02, 2019, the CDE sent a letter to the Board and Superintendent setting a deadline of October 08, 2019 to *submit a “legally compliant budget”*.

Therefore, the Board hereby resolves as follows:

1. The Board has met all statutory requirements, and has lawfully, timely, and properly adopted a 2019-2020 Budget, and the Board has submitted this Budget to the California Department of Education and State Superintendent of Public Instruction; and
2. The Superintendent, in his capacity as ex-officio Secretary to the Board, and pursuant to his duties and obligations to the Board in connection therewith, is once again requested and directed to affix his signature to the 2019-2020 OCDE Budget originally adopted by the Board on June 26, 2019 and re-adopted on August 01, 2019 (hereafter the “Budget”); and
3. The Superintendent after affixing his signature to the Budget, is once again requested and directed to submit the Budget to the CDE and the SPI forthwith; and
4. In light of the October 02, 2019 letter from the CDE, the Board authorizes and engages the law firm of Epstein Becker & Green, P.C. to pursue appropriate litigation and related informal efforts to preserve the statutory, lawful, and legitimate role of the Board in approving and adopting the annual Budget of the OCDE.

AYES: Williams, Barke, Sparks

NOES: Bedell, Gomez

ABSENT:

STATE OF CALIFORNIA, COUNTY OR ORANGE

I, Mari Barke, President of the Board of Education of Orange County, California, hereby certify that the foregoing Resolution was duly and regularly adopted by the said Board at a regular meeting thereof held on the 16th day of October 2019 and passed by a vote of 3-2.

IN WITNESS THEREOF, I have hereunto set my hand and seal this sixteenth day of October 2019.



Mari Barke, President
Orange County Board of Education

