



REGULAR MEETING  
February 5, 2020  
5:00 p.m.  
Board Room  
200 Kalmus Drive, Costa Mesa, CA

ORANGE COUNTY BOARD OF EDUCATION  
AGENDA

<u>CALL TO ORDER</u>	STATEMENT OF PRESIDING OFFICER: For the benefit of the record, this Regular Meeting of the Orange County Board of Education is called to order.
<u>ROLL CALL</u>	
(*) <u>AGENDA</u>	Regular Meeting of February 5, 2020 – adoption
<u>PUBLIC COMMENTS</u>	Related to Closed Session Only
<u>CLOSED SESSION 1</u>	CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION Orange County Board of Education v. Orange County Superintendent of Schools, Case No. 30-2018-01023385-CU-MC-CJC Government Code Section 54956.9(a) and (d)(1)
<u>CLOSED SESSION 2</u>	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)
<u>WELCOME</u>	
<u>INVOCATION</u> 6:00 p.m.	Dr Ahmed Soboh, Chairman, Islamic Shura Council of Southern California
<u>PLEDGE OF ALLEGIANCE</u>	
<u>NATIONAL ANTHEM</u>	Tawnie Shorter Musical Theatre, OCSA Class of 2021
<u>INTRODUCTIONS</u>	
(*) <u>MINUTES</u>	Regular Meeting of January 8, 2020 - approval
<u>PUBLIC COMMENTS</u>	(30 minutes)

## CONSENT CALENDAR

- (\*) 1. Approve the granting of diplomas to the students listed from Alternative, Community, and Correctional Education Schools and Services, Alternative Education Division.
- (\*) 2. Accept the 2nd Quarter Report on Williams Uniform Complaints for OCDE student programs for the period of October 1 to December 31, 2019.

## CHARTER SCHOOLS

- 3. Charter Submissions
- (\*) 4. Charter School Public Hearing – Orange County School of Arts - Aracely Chastain, Administrator, Charter Schools will facilitate the public hearing.

Discussion Format:

Orange County School of Arts

Santa Ana Unified School District

Public Comments – Orange County School of Arts

Board Questions

## BOARD RECOMMENDATIONS

- (\*) 5. Posting of Public Documents (Williams)
- (\*) 6. Adopt board resolution #02-20: National Black History Month. (Williams)
- (\*) 7. Adopt Resolution #03-20 to recognize March 2020 as Arts Education Month.

## STAFF RECOMMENDATIONS

- (\*) 8. Approve the 2019-20 First Interim Report, which has been certified as positive by the County Superintendent of Schools.
- (\*) 9. Board action on Irvine International Academy

## INFORMATION ITEMS

### BOARD DISCUSSION

-Board Policy on New Member Governance (Bedell)

-Term Limits Committee Report

-Board Benefits Committee Report

ANNOUNCEMENTS

- Superintendent
- Associate Superintendent

Legislative Updates

- CSBA Update
- CCBE Update
- NSBA Update
- Capitol News Update
- School Services Update

BOARD MEMBER COMMENTS

EXECUTIVE COMMITTEE REPORT

PUBLIC COMMENTS (15 minutes)

ADJOURNMENT



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Nina Boyd  
Assistant Secretary, Board of Education

Next Regular Board Meeting: Wednesday, March 4, 2020 at 9:00 a.m. The meeting will be in the Board Room at 200 Kalmus Drive, Costa Mesa, CA.

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.

(\*) Printed items included in materials mailed to Board Members

MINUTES  
Regular Meeting  
January 8, 2020



ORANGE COUNTY BOARD OF EDUCATION  
MINUTES

CALL TO ORDER

The Regular Meeting of the Orange County Board of Education was called to order by Board President Barke at 9:03 a.m., January 8, 2020 in the Board Room, 200 Kalmus Drive, Costa Mesa, California.

ROLL CALL

Present:

Mari Barke  
Ken L. Williams, D.O.  
Rebecca "Beckie" Gomez  
John W. Bedell, Ph.D.  
Lisa Sparks, Ph.D.

(\*)AGENDA

Motion by Williams, seconded by Bedell, and carried by a vote of 5-0 to approve the agenda of the Regular Meeting of January 8, 2020, moving item #10 to an 11:30 a.m. time certain.

PUBLIC COMMENTS

Related to Closed Session Only - None

The Board went into closed session from 9:06 a.m. to 10:07 a.m.

CLOSED SESSION 1

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Orange County Board of Education v. Orange County Superintendent of Schools, Case No. 30-2018-01023385-CU-MC-CJC

Government Code Section 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



The Board will conclude the closed session and report out at a later time on the agenda.

INVOCATION

Pastor Joe Hogan

PLEDGE OF ALLEGIANCE

Ken L. Williams, D.O., Board Vice President

INTRODUCTIONS

None

MINUTES

Motion by Bedell, seconded by Williams, and carried by a vote of 5-0, to approve the minutes of the December 11, 2019 Regular Board Meeting.

CONSENT CALENDAR

1. Motion by Bedell, seconded by Williams, and carried by a vote of 5-0, to approve the granting of diplomas to the students listed from Alternative, Community, and Correctional Education Schools and Services, Alternative Education Division.

PUBLIC COMMENTS

- Paulette Chaffee, General
- Joyce McNabb, General
- Lynne Riddle, AB48 – Prop 13

PUBLIC COMMENTS (OCSA only)

- Miguel Pulido, OCSA
- Margaret Chidester, OCSA
- Luke Pumakanta, SAUSD
- Sonia Llamas, SAUSD

CHARTER SCHOOLS

2. Charter Schools Submissions- Kelly Gaughran facilitated.
  - Orange County School of Arts- Dr. Ralph Opacic
3. Charter School Public Hearing – Irvine International Academy – Aracely Chastain, Administrator, Charter Schools facilitated the public hearing.
  - Dr. Michael Scott, Irvine International Academy
  - Scott Warner, Irvine International Academy
  - Sei Hee Park, Attorney, Young, Minney & Corr
  - Terry Walker, Superintendent, Irvine Unified School District
  - John Fogarty, Assistant Superintendent, Business Services, Irvine Unified School District
  - Cassie Parham, Assistant Superintendent, Educational Services, Irvine Unified School District

## PUBLIC COMMENTS

- Christina Shelby, Irvine International Academy
- Jessica Lee, Irvine International Academy
- Marcelino Calvo-Cruz, Irvine International Academy

## STAFF RECOMMENDATIONS

10. Receive Vavrinek, Trine, Day & Co., LLP, audit report for the Orange County Department of Education for fiscal year ending June 30, 2019.- Received by the Board

- Royce Townsend, Eide Bailly LLP (Vavrinek, Trine, Day & Co)

The Board took a recess from 12:33 p.m. to 12:53 p.m.

## CHARTER SCHOOLS

4. Charter School Public Hearing - International School for Science and Culture-- Aracely Chastain, Administrator, Charter Schools facilitated the public hearing.

- Padmini Srinivasan, Executive Director, ISSAC
- Russell Lee-Sung, Deputy Superintendent, Newport-Mesa USD

## PUBLIC COMMENTS

- Kana Noriega, ISSAC

## BOARD RECOMMENDATIONS

5. Motion by Sparks, seconded by Williams, and carried by a vote of 3-2 (Sparks, Williams, and Barke voted Yes; Gomez and Bedell voted No) to approve the Public Statement posting on OCBE Web Site as recommended by Trustee Williams.
6. Motion by Williams, seconded by Sparks, and carried by a vote of 3-1-1 (Sparks, Williams, and Barke voted Yes; Gomez voted No; and Bedell Abstained) to approve the posting of court documents.
7. Motion by Barke, seconded by Williams, to approve moving board meeting start time to late afternoon or early evening the first Wednesday of the month.

The original motion was withdrawn by Barke

Subsidiary motion by Barke, seconded by Sparks, and carried by a vote of 4-0-1 (Barke, Sparks, Williams, Gomez voted Yes;

Bedell Abstained) to approve moving the regular board meeting start time to 5:00 p.m. and closed session at 4:00 p.m., the first Wednesday of the month, effective June 2020.

By board consensus, the February meeting was moved to February 5, 2020 with a start time of 6:00 p.m. for the regular meeting and 5:00 p.m. for closed session.

8. Motion by Williams, seconded by Barke, and carried by a vote of 5-0, to approve Resolution #01-20 - Excess Property Tax for County Offices of Education (Education Code 2578).

### STAFF RECOMMENDATIONS

9. Motion by Williams, seconded by Sparks, and carried by a vote of 3-2 (Sparks, Williams, and Barke voted Yes; Gomez and Bedell voted No) to table the approval of the 2019-20 First Interim Report, which has been certified as positive by the County Superintendent of Schools.

### INFORMATION ITEMS

#### BOARD DISCUSSION

- Charter School Certificates (Williams)
- Board Policy on New Member Governance (Bedell) – Tabled
- Term Limits Committee Report
- OCBE Benefits Committee Report- Tabled to March 2020

#### ANNOUNCEMENTS

##### Superintendent

- 2020 California Distinguished Schools
- OC Human Relations/ OCDE, January 7<sup>th</sup> and January 22<sup>nd</sup>
- Acknowledgement of outstanding job- OCDE Charter Schools Unit

##### Associate Superintendent

- Next board meeting is February 5<sup>th</sup> at 6:00 p.m., closed session at 5:00 p.m. – Submission deadline is January 21<sup>st</sup>
- National Charter Schools Conference, Florida, June 21-24
- Mental Health Forum- January 22<sup>nd</sup>, 11:00 a.m. to 3:30 p.m.
- OCSBA Seminar- Kevin Gordon, January 22<sup>nd</sup>, 4pm at OCDE
- Office Closed: Monday, January 20<sup>th</sup>

#### BOARD MEMBER COMMENTS

- Trustee Bedell- David L. Boyd

### PUBLIC COMMENTS

- Kathy Moffat, Mandarin Immersion Support for AB48

The Board took a recess from 2:46 p.m. to 3:24 p.m. to go into closed session.

CLOSED SESSION 1

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Orange County Board of Education v. Orange County Superintendent of Schools, Case No. 30-2018-01023385-CU-MC-CJC  
Government Code Section 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

Report Out by Mr. Brenner

For Closed Session #1 and #2, the Board received an update and concluded its discussion. The only action taken was to approve the invoices dated December 31, 2019. The Board voted 4-1 (Barke, Williams, Sparks, and Bedell voted Yes; Gomez voted No) to approve payments for the invoices.

With regard to Closed Session #3, there was no discussion and no action was taken.

ADJOURNMENT

On a motion duly made, and seconded, the Board meeting of January 8, 2020, adjourned at 3:26 p.m.



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Nina Boyd  
Assistant Secretary, Board of Education

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Mari Barke  
President, Board of Education

Next Regular Board Meeting, Wednesday, February 5, 2020 at 5:00 p.m. - The meeting will be held in the Board Room at 200 Kalmus Drive, Costa Mesa, CA.

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*MB*

**ORANGE COUNTY BOARD OF EDUCATION**

**BOARD AGENDA ITEM**

DATE: January 22, 2020  
TO: Nina Boyd, Associate Superintendent  
FROM: Jeff Hittenberger, Chief Academic Officer  
SUBJECT: Granting of Diplomas

The students listed on the attached pages have been certified for graduation by the Custodian of Records or their designee for the Division of Alternative Education of the Orange County Department of Education. These students have met the standards of proficiency in the basic skills prescribed by the governing board in accordance with Education Code 51412. It is requested that the Board approve the granting of diplomas to these students.

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**RECOMMENDATION:**

Approve granting of diplomas to the students listed from Alternative, Community, and Correctional Education Schools and Services, Alternative Education Division.

LS:sl

Pages 10-11 removed (CONFIDENTIAL STUDENT INFORMATION)

UB

ORANGE COUNTY BOARD OF EDUCATION

BOARD AGENDA ITEM

DATE: February 5, 2020  
TO: Nina Boyd, Associate Superintendent  
FROM: Christine Omlstead, Ed.D., Associate Superintendent  
Educational Services Division  
Stacy Deeble-Reynolds, Director  
Student Achievement and Wellness Unit  
SUBJECT: Acceptance of 2<sup>nd</sup> Quarter Report on Williams Uniform Complaints  
for the Period of October 1 to December 31, 2019 for OCDE Student Programs

California Education Code section 35186(d) requires that school districts and county operated programs report summarized data on the nature and resolution of all Williams Uniform Complaints on a quarterly basis to the county superintendent of schools and the governing board of the school district.

The enclosed report indicates no complaints were filed for the Orange County Department of Education student programs in the Divisions of Alternative Education and Special Education Services for the period of October 1 to December 31, 2019.

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RECOMMENDATION:

Accept the 2<sup>nd</sup> Quarter Report on Williams Uniform Complaints for OCDE student programs for the period of October 1 to December 31, 2019.

SDR:ag

4385011320



ORANGE COUNTY DEPARTMENT OF EDUCATION  
Second Quarter Report on Williams Uniform Complaints  
October 1 – December 31, 2019

Education Code section 35186(d) requires that school districts and county operated programs report summarized data on the nature and resolution of all Williams Uniform complaints on a quarterly basis to the County Superintendent of Schools and their governing board. This report includes the number of complaints filed, if any, by general subject area and identifies the number of resolved and unresolved complaints.

**Division of Alternative Education**

General Subject Area	Total # of Complaints	# Resolved	# Unresolved
Textbooks and Instructional Materials	0		
Teacher Vacancies or Misassignments	0		
Facility Conditions	0		
TOTALS	0		

**Division of Special Education Services**

General Subject Area	Total # of Complaints	# Resolved	# Unresolved
Textbooks and Instructional Materials	0		
Teacher Vacancies or Misassignments	0		
Facility Conditions	0		
TOTALS	0		



**ORANGE COUNTY BOARD OF  
BOARD AGENDA II**

Item: Charter Schools #4

February 5, 2020

[X] Mailed [ ] Distributed at meeting



**DATE:** January 22, 2020

**TO:** Nina Boyd, Associate Superintendent

**FROM:** Kelly Gaughran, Director, Charter Schools  
Aracely Chastain, Administrator, Charter Schools

**SUBJECT:** Public Hearing - Orange County School of the Arts Renewal Appeal

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**DESCRIPTION:**

On January 8, 2020, Orange County Board of Education (OCBE) accepted an appeal submission by Orange County School of the Arts for the denial of the school's renewal charter petition by the Santa Ana Unified School District for a charter term of July 1, 2020 to June 30, 2025.

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**RECOMMENDATION:**

Per California Education Code § 47607, on January 8, 2020, OCBE shall hold a public hearing on the provisions of the Orange County School of the Arts charter petition and consider the level of support for the charter school.

DB

ORANGE COUNTY BOARD OF EDUCATION

**BOARD AGENDA ITEM**

DATE: January 24, 2020  
TO: Nina Boyd, Associate Superintendent  
FROM: Ken L. Williams, D.O., Board Vice President  
SUBJECT: Posting of Board Documents

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RECOMMENDATION:

Posting of Board Documents

Case No. G058491

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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ORANGE COUNTY BOARD OF EDUCATION,

Plaintiff and Respondent,

v.

AL MIJARES

Defendant and Appellant,

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FROM THE SUPERIOR COURT FOR ORANGE COUNTY  
HON. JAMES CRANDALL, DEPT. C33  
SUPERIOR COURT CASE No. 30-2018-01023385

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**OPPOSITION TO PETITION  
FOR WRIT OF SUPERSEDEAS  
OR OTHER APPROPRIATE RELIEF AND  
DECLARATION OF KEN WILLIAMS IN  
SUPPORT THEREOF**

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Jonathan M. Brenner (SBN 162366)  
Kristin M. Halsing (SBN 318602)  
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Attorneys for Plaintiff/Respondent  
ORANGE COUNTY BOARD OF EDUCATION

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS  
(Cal. Rules of Court, Rule 8.208)

The following entities or persons have either (1) an ownership interest of 10 percent or more in the party or parties filing this certificate (Cal. Rules of Court, rule 8.208(e)(1)) or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves (Cal. Rules of Court, rule 8.208(e)(2)):

- Orange County Board of Education
- Al Mijares
- Jeffrey Riel
- Gregory Rolen
- Haight Brown Bonesteel, LLP

Dated: January 17, 2020

EPSTEIN BECKER & GREEN, P.C.

By: */s/ Jonathan M. Brenner*

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Jonathan M. Brenner  
Kristin M. Halsing  
Susan Graham

Attorneys for Plaintiff/Respondent  
ORANGE COUNTY BOARD OF  
EDUCATION

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TO HONORABLE PRESIDING JUSTICE AND THE  
HONORABLE ASSOCIATE JUSTICES OF THE COURT OF  
APPEAL OF THE STATE OF CALIFORNIA

**I. BOTH THE SUPERSEDEAS WRIT AND PRELIMINARY  
INJUNCTION APPEAL WILL BE RENDERED MOOT BY  
THE UPCOMING TRIAL AND ENSUING JUDGMENT**

Petitioner-Defendant Al Mijares (“Petitioner” or “Mijares”) seeks a writ of supersedeas and temporary stay in his appeal of an interlocutory order granting a preliminary injunction. The trial currently is scheduled for February 10, 2020 in the Orange County Superior Court.<sup>1</sup> The trial court issued the preliminary injunction on July 25, 2019, to preserve the status quo and avoid irreparable harm to the Board and the public from the possibility of being denied timely legal advice from its counsel due to non-payment of fees imposed by Petitioner’s actions while the litigation was pending (the Board is authorized by law to engage professional service providers and provide for their payment, but it does not have administrative staff and functions to perform ministerial duties such as processing payment of invoices, which

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<sup>1</sup> The case has priority for trial pursuant to C.C.P. §§ 1062.3 and 527(e). The parties recently stipulated to a continuance of the January 21, 2020 trial date to February 10, 2020, and the trial court expressly recognized this priority in its order scheduling the trial for the February 10 date.



capabilities are administered – or ‘superintended’ – by and subject to the control of Petitioner within the Orange County Department of Education). Petitioner initially complied with that order, and allowed issuance of payment of Mr. Rolen’s fees through June 30, 2019, to proceed.

On October 4, 2019, Petitioner filed a petition for a writ of mandate against the preliminary injunction order and sought an immediate stay. (*See* Case No. G058418, and the filings therein.) This Court denied the writ and the stay request on October 9, 2019. Petitioner then filed a notice of appeal from the preliminary injunction order on October 25, 2019, and he subsequently sought a stay of the order from the trial. The appeal is currently pending, and the trial court denied Petitioner’s stay request on December 17, 2019. Petitioner then ultimately filed this request for a writ of supersedeas on December 24, 2019, nearly two months after filing his appeal, and nearly five months after the preliminary injunction order was issued.

On January 7, 2020, the Court of Appeal denied Petitioner’s request for a temporary stay and requested the parties address whether the supersedeas petition and/or the

appeal of the preliminary injunction will be mooted by the upcoming trial and ensuing judgment.

In response to the Court's inquiry, both the appeal of the interlocutory order and the petition for writ of supersedeas will be rendered moot within the next few weeks, upon entry of a final judgment following trial, assuming that trial is heard as scheduled or reasonably soon thereafter (which is a very fair assumption given this case's trial priority and that it will be tried to the bench).

A preliminary injunction is an interim remedy designed to maintain the status quo pending a decision on the merits. (*Gray v. Bybee* (1943) 60 Cal.App.2d 564, 571.) It "is not, in itself, a cause of action." (*MaJor v. Miraverde Homeowners Assn.* (1992) 7 Cal. App. 4th 618, 623.) "It is well settled that an injunction pendente lite remains in force only until rendition of the final judgment in the case." (*People's Ditch Co. v. Foothill Irr. Dist.* (1930) 103 Cal. App. 321, 325.) This is because it is temporary in character and "assumes a pending litigation in which all questions are to be settled by a judgment, and operates only until that judgment is rendered. If by that a permanent injunction is granted the temporary one is of course ended, and equally so if a

permanent injunction is denied.” (Ibid., internal citations omitted, emphasis added.)

Accordingly, the entry of a final judgment following trial on the merits terminates the preliminary injunction regardless of which party prevails at trial. If Respondent-Plaintiff Orange County Board of Education (Respondent) prevails at trial, it will have secured a permanent injunction against Petitioner, and the preliminary injunction effectively will be merged into the permanent injunction and thereafter no longer have any force or effect. On the other hand, if Petitioner prevails, then a judgment will be entered that Respondent is not entitled to injunctive relief. Under either scenario, the preliminary injunction is terminated because “the fate of a preliminary injunction, having a strictly adjunct character, depends on the main action.” (*S. Christian Leadership Conference v. Al Malaikah Auditorium Co.* (1991) 230 Cal. App. 3d 207, 223.) Once the main action is decided on its merits, the preliminary injunction, a provisional remedy that is temporary in character, ceases to exist.

Further, in the event that Respondent seeks an appeal from an adverse judgment, under the one final judgment rule, it will take one appeal from the judgment that is entered following

trial and the prior appeal from the interlocutory order will be dismissed. In this respect, the case of *Pac. Gas & Elec. Co. v. City of Berkeley* (1979) 60 Cal. App. 3d 123, 126 is directly on point: “Defendants had also filed a notice of appeal from the trial court’s earlier order granting PG&E a preliminary injunction. Since that order was a provisional remedy which ceased to have any operational effect once the permanent injunction was granted, the appeal therefrom must be dismissed.”

Similarly, any supersedeas writ that is issued would be rendered moot by the entry of judgment following trial. The supersedeas writ requested by Petitioner seeks relief in conjunction with the preliminary injunction order (specifically requesting that the Court find that Petitioner’s appeal from the preliminary injunction order automatic stays enforcement of that order.) As the preliminary injunction terminates upon entry of judgment following trial, so too does a related supersedeas writ.

## **II. THE WRIT SHOULD BE DENIED BECAUSE THE PRELIMINARY INJUNCTION ORDER IS PROHIBITORY**

Should this Court proceed to address the merits of the relief requested in the writ of supersedeas, then the writ should be denied on the basis that the preliminary injunction was

prohibitory in nature and therefore Petitioner's appeal did not automatically stay enforcement of the injunction.

An order enjoining action by a party is prohibitory in nature if its effect is to leave the parties in the same position as they were prior to the entry of the judgment. On the other hand, it is mandatory in effect if its enforcement would be to change the position of the parties and compel them to act in accordance with the judgment rendered." (*Musicians Club of L. A. v. Superior Court* (1958) 165 Cal.App.2d 67, 71.)

As stated by the Court of Appeal in *URS Corp. v. Atkinson/Walsh Joint Venture* (2017) 15 Cal.App.5th 872, 884, oftentimes in determining whether an injunction is mandatory or prohibitory, "[r]easonable arguments can be mustered for either conclusion, and the answer depends largely on how one defines the 'status quo.'"<sup>2</sup> (Internal citation omitted.)

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<sup>2</sup> This best can be demonstrated by Petitioner's change in legal position in this lawsuit, as it first argued to the trial court that the appeal of the preliminary injunction order did NOT operate to stay the injunction and that it would be obligated to continue making payment of the invoices even if the order were appealed. See Appendix, Vol. VI, p. 1050.) Notably, Petitioner omits from his Appendix the petition for writ of mandate to review the preliminary injunction order and opposition thereto. Regardless, Petitioner now attempts to explain this "flip-flop" based on his counsel having conducted "additional legal research" after these representations were made to the trial court that an appeal would not act to cease the obligation to continue making payments in compliance with the preliminary injunction. (Petition, p. 39.)

URS noted that “a party cannot unilaterally create a status quo for purposes of the prohibitory/mandatory dichotomy by its improper conduct” and there “is no magic in the phrase ‘maintaining the status quo’ which transforms an injunction essentially prohibitive into an injunction essentially mandatory.” (*URS, supra*, 15 Cal.App.5<sup>th</sup> at 886, citing *United Railroads v. Superior Court* (1916) 172 Cal. 80, 87.)

Here, the preliminary injunction “enjoins and restrains” Petitioner from “refusing to remit payment which has been approved by the Executive Committee of the Board to Gregory Role and Haight Brown Bonesteel for legal services performed for the Board.”<sup>3</sup> The injunction is prohibitory on its face. Its legal effect is also prohibitory considering the context of the complaint on which it is based.

The second cause of action for injunctive relief alleges that Petitioner “violated California law by interfering with the Board's receipt of legal advice and counsel from its outside attorney by, for example, refusing to pay counsel's legal fees . . . .” (Complaint, Appendix to Petition, Vol. 1, p.55, emphasis added.)

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<sup>3</sup> Appendix, Vol. VI, p. 808.

It is in this context that the trial court issued the order granting the preliminary injunction. The court recognized the need for a provisional remedy to maintain the status quo “under the circumstances of this unique factual setting,” so that Respondent could continue to conduct operations and that irreparable harm to the Board and to the public could be avoided while this action was pending: “[W]hen you have General Counsel who’s potentially conflicted out, business has to go on. And the Board has the right to make sure the business goes forward. And they have a right to appoint someone to do those special services.” (Appendix to Petition, Vol. V, p. 586.)

The prohibitory nature of the injunction, and what distinguishes it from the case of *Davenport v. Blue Cross of California* (1997) 52 Cal.App.4<sup>th</sup> 435, upon which Petitioner heavily relies, is that here the Board was the entity with the authority to approve the incurrence of fees for services rendered to it, while the Superintendent merely remitted payment for the fees that the Board approves.

As detailed in the declaration of Ken Williams filed in support of this Opposition (“Williams Dec.”), the Board retained outside counsel, Gregory Rolen, to provide legal advice and

representation to the Board due to adversity and conflicts of interest arising from Petitioner's purported appointment of Jeffrey Riel as General Counsel to the Board.<sup>4</sup> The Board approved payment of Mr. Rolen's invoices pursuant to Education Code section 1042(d), which authorizes the Board to "[c]ontract with and employ any persons for the furnishing to the county board of education of special services and advice in financial, economic, accounting, engineering, legal, or administrative matters if these persons are specially trained and experienced and competent to perform the special services required. The county board of education may pay from any available funds the compensation that it deems proper for the services rendered."

It is only because the Board does not have the administrative resources and support staff that it relies upon the Superintendent's office to remit payment to vendors. (Williams Dec., ¶ 4.) For at least 23 years, the Board, not the Superintendent, has exercised the exclusive right to approve vendors who provide services to the Board, and the Board has

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<sup>4</sup> These conflicts were described in a prior Declaration of Williams filed in support of the Board's Motion for Preliminary Injunction, Appendix, Vol. I, pp.112-119.



acted upon this interpretation and not sought the authorization or approval of the Superintendent. (Ibid.)

This methodology of the Board approving necessary expenses to conduct its business and the Superintendent's office remitting payment once the Board authorizes and submits those invoices has been the status quo for 23 years, with the Superintendent's office routinely remitting payment. (Id. at ¶5.)

In the case of Mr. Rolen's invoices, Petitioner changed the status quo, by blocking payment of those Board-approved invoices. This is in complete contrast to the facts of *Davenport*, which involved a request for coverage to an insurance company to pay for certain medical treatment. The insurance company, not the insured, had the authority to approve or deny coverage and payment under the terms of the insurance contract. As such, the court of appeal found that the injunction "plainly ordered the insurer to perform affirmative acts that would change the position of the parties, by compelling the insurer to authorize and pay for the insured's treatment." (*Davenport, supra*, 52 Cal. App. 4th 435, 437, emphasis added.)

These facts in *Davenport* are totally inapposite to the ones before the Court in the current Petition, where it is the Board

who is statutorily authorized to incur the expenses for vendor services and to authorize payment “from any available funds,” and where the Department has routinely remitted such authorized payments for those services in response to the Board’s authority and approval. This “status quo” for at least the past 23 years has been changed with the invoices approved and submitted by the Board for the services of Gregory Rolen and the firm of Haight, Brown, and Bonesteel. These invoices were not paid as a result of the clear interference of Petitioner, who is engaged in litigation with the Board. The preliminary injunction prohibits Petitioner from continuing this interference, nothing more.

The act of Petitioner in interfering with the legal services by not paying invoices is both central to the claim for injunctive relief in the complaint and also in the legal effect of the preliminary injunction that the trial court issued. Petitioner is incorrect in arguing otherwise. By enjoining Petitioner from “refusing to remit payment which has been approved by the Board,” the preliminary injunction effectively prevents Petitioner’s interference with what is the routine and ministerial processing of such payments. Further, the Petition is expressly

prohibitory on its face as well as its practical effect. It was not designed to require affirmative acts but to require that Petitioner not block or interfere with the payment of the invoices and the ability of Respondent to utilize vital legal services. As such, the Petition should be denied on its merits.

### **III. SUPERSEDEAS IS UNNECESSARY IN LIGHT OF THE PROXIMITY OF THIS MATTER TO TRIAL**

Petitioner contends that a writ of supersedeas is needed because of the risk he faces that Respondent will seek an order of contempt from the trial court due to Petitioner's violation of the preliminary injunction. (Pet., p. 7.)<sup>5</sup> As noted, in light of the imminent trial of this proceeding on February 10, 2010, and the ensuing judgment that effectively will terminate the preliminary injunction (irrespective of how the trial court rules on the underlying claims to be tried).

Due to the ongoing conflicts of interest with and adversity to Petitioner's appointed general counsel Riel, Petitioner's continuing interference with the routine payment of the invoices

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<sup>5</sup> Petitioner included a meet and confer letter in its Appendix at Vol. VII, pp. 1173-1174. Petitioner failed to authenticate the letter, which was not previously filed with the court. The Petition incorrectly states that all exhibits contained in the appendix are either transcripts from hearings on record or original documents on file with the trial court. (Petition, pp. 14-15.)

incurred by the Board for the services of Mr. Rolen has jeopardized the ability of the Board to receive timely legal advice from counsel with whom the Board does not have a conflict. (Williams Dec., ¶ 5.) As the trial court pointed out at the hearing on Petitioner's prior motion to stay, the Board hired Mr. Rolen "temporarily to cover your needs from some legal advice . . . while there was this conflict of interest issue was being resolved." (Appendix, Vol. VII, p. 1138.)

Petitioner has brought this supersedeas request months after the preliminary injunction order was issued, months after he first sought a writ of mandate from this Court and an immediate stay (which this Court denied on October 9, 2019 – *see* Case. No. G058418), and weeks after he then filed an appeal from the preliminary injunction order and sought a stay (which was denied) in the trial court. Petitioner should comply with the preliminary injunction, which is necessary and was entered by the trial court to preserve the status quo and avoid harm to the Board and to the public while this litigation is pending. Nonetheless, as a result of Petitioner's timing in seeking this writ, the trial court will have rendered a decision on the merits at

the trial of this matter before any contempt motion would be heard.

In light of this, there is no basis to consider the Petition. The “sole function” of a writ of supersedeas is to preserve the court’s appellate jurisdiction “pending review of the appeal and a ruling on its merits.” (*Mills v. Cty. of Trinity* (1971) 98 Cal. App. 3d 859, 861.) A “writ of supersedeas does not pass on the merits of the appealed judgment or order.” Eisenberg, et al, Cal. Prac. Guide: Civil Appeals & Writs (The Rutter Group 2019), ¶7.260. See also *Rubin v. Am. Sportsmen Television Equity Soc.* (1951), 102 Cal. App. 2d 288, 291 (the merits of the appealed judgment or order “are not matters of concern” when passing on a writ of supersedeas.) Under the present circumstances, a writ of supersedeas is clearly not needed to preserve the court’s appellate jurisdiction or otherwise to address a provisional remedial order that will be rendered moot in a matter of weeks upon judgement of the court at trial.

#### IV. CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court deny the Petition for Writ of Supersedeas.

Dated: January 17, 2020

EPSTEIN BECKER & GREEN, P.C.

By: */s/ Jonathan M. Brenner*

---

Jonathan M. Brenner  
Kristin M. Halsing  
Susan Graham

Attorneys for Plaintiff/Respondent  
ORANGE COUNTY BOARD OF  
EDUCATION

CERTIFICATE OF COMPLIANCE  
(Cal. Rules of Court, Rule 8.504)

Counsel hereby certifies pursuant to California Rules of Court, Rule 8.204(c)(1), that this brief contains 13-point Century type, including footnotes, and excluding tables of contents, tables of authorities, certificate of compliance, certificate of interested entities or persons, and signature block, contains 3,496 words, as counted by Microsoft's word-processing program used to generate this brief.

Dated: January 17, 2020   EPSTEIN BECKER & GREEN, P.C.

By: /s/ Jonathan M. Brenner

Jonathan M. Brenner  
Kristin M. Halsing  
Susan Graham

*Attorneys for Plaintiff and  
Respondent*  
ORANGE COUNTY BOARD OF  
EDUCATION

## *DECLARATION OF KEN WILLIAMS*

1. I am currently the Vice President of the Orange County Board of Education (the “Board”). I have personal knowledge of the facts stated in this declaration, and if called as a witness I could and would testify thereto.

2. I make this declaration in support of the Board’s Opposition to Defendant-Petitioner Al Mijares’ Petition for Writ of Supersedeas and the contention that the preliminary injunction the Board requested, and the trial court issued, is mandatory in nature.

3. The Board retained outside counsel, Gregory Rolen, to provide legal advice and representation to the Board due to conflicts of interest arising from Petitioner’s purported appointment of Jeffrey Riel as General Counsel to the Board. The Board approved payment of Mr. Rolen’s invoices pursuant to Education Code section 1042(d), which authorizes the Board to “[c]ontract with and employ any persons for the furnishing to the county board of education of special services and advice in financial, economic, accounting, engineering, legal, or administrative matters if these persons are specially trained and



experienced and competent to perform the special services required. The county board of education may pay from any available funds the compensation that it deems proper for the services rendered.”

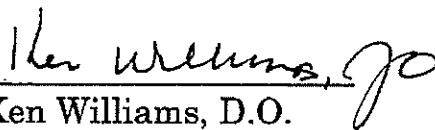
4. For the 23 years that I have served on the Board, the Board has interpreted this authority as giving the Board, not the Superintendent, the exclusive right to approve vendors who provide services to the Board, and the Board has acted upon this interpretation and not sought the authorization or approval of the Superintendent. In fact, it is only because the Board does not have the administrative resources and support staff that it relies upon the Superintendent’s office to remit payment to vendors.

5. This methodology of the Board approving necessary expenses to conduct its business and the Superintendent’s office remitting payment once the Board authorizes and submits invoices has operated smoothly for 23 years, with the Superintendent’s office routinely remitting payment. In the case of Mr. Rolen’s invoices, Petitioner changed the status quo, blocking payment of those invoices. In light of the Board’s position that purported General Counsel Riel, whom Petitioner purportedly appointed, has conflicts of interests with the Board,

and that his staff would similarly be conflicted out as they report to the General Counsel, and in light of the ongoing litigation against Petitioner, Petitioner's continuing interference with the routine payment of the invoices incurred by the Board for the services of Mr. Rolen, despite the preliminary injunction having been issued by the trial court, jeopardizes the ability of the Board to receive timely legal advice from counsel with whom the Board does not have a conflict, including due to the ongoing litigation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 17<sup>th</sup> day of January 2020 at Irvine, California.

  
Ken Williams, D.O.

## CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2020, I caused to be served one (1) copy of OPPOSITION TO PETITION FOR WRIT OF SUPERSEDEAS OR OTHER APPROPRIATE RELIEF AND DECLARATION OF KEN WILLIAMS IN SUPPORT THEREOF on the following counsel of record via the methods of service indicated below:

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Dated this 17<sup>th</sup> Day of January 2020 at Los Angeles, California.

/s/ Lynne Conner  
Lynne Conner

**STAY REQUESTED – Preliminary Injunction dated July 25, 2019**  
Case No. G058491  
Super. Ct. No. 30-2018-01023385

**IN THE COURT OF APPEAL, STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT, DIVISION THREE**

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**ORANGE COUNTY BOARD OF EDUCATION,**

Plaintiff and Respondent,

**v.**

**AL MIJARES, et al.,**

Defendant and Appellant.

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From the Orange County Superior Court, Hon. James Crandall, Dept. C33, (657)  
622-5233

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**PETITION FOR WRIT OF SUPERSEDEAS OR OTHER APPROPRIATE  
RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES**

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**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

The following entities or persons have either (1) an ownership interest of 10 percent or more in the party filing this certificate (Cal. Rules of Court, rule 8.208(e)(1)), or (2) a financial or other interest in the outcome of the proceedings that the justices should consider in determining whether to disqualify themselves (Cal. Rules of Court, rule 8.208(e)(2)):

Gregory Rolan, Esq., and the law firm of Haight Brown Bonesteel LLP, have a financial interest in the subject matter of this Appeal, because the Preliminary Injunction that is being challenged in this Appeal compels payment of their legal fees.

Jeffrey Riel, Esq., has an indirect financial interest in the subject matter of this Appeal, because the Appeal concerns issues of law that relate to the propriety of his hiring as General Counsel for the Appellant Orange County Superintendent of Schools and Respondent Orange County Board of Education.

Dated: December 24, 2019

By:   
Edmond M. Connor  
Attorneys for Defendant and  
Petitioner Al Mijares, Ph.D., Orange  
County Superintendent of Schools



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## 1.0 SUMMARY OF PETITION.

Petitioner Al Mijares, in his official capacity as the Orange County Superintendent of Schools (the “Superintendent”) has been threatened with contempt of court for refusing to comply with the mandatory preliminary injunction order<sup>1</sup> (the “Preliminary Injunction”) that is the subject of the above-captioned appeal (the “Appeal”).<sup>2</sup>

Absent a writ of supersedeas from this Court to confirm and enforce the automatic stay under Code of Civil Procedure section 916, the Superintendent is faced with the Hobson’s choice of either: (a) abandoning his claim that the Preliminary Injunction is automatically stayed, or (b) risking a finding of contempt by the trial court.

The Superintendent had hoped to avoid such a dilemma by following the procedure outlined in the Court’s decision in *URS Corp. v. Atkinson/Walsh Joint Venture* (2017) 15 Cal.App.5th 872, 890 (“*URS Corp.*”).<sup>3</sup> Specifically, the Superintendent filed a noticed motion in the trial court (1) seeking to confirm the predicate fact that the Preliminary

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<sup>1</sup> VI Appx Tab 41, at 866:7-11 (Aug. 28, 2019 Notice of Ruling on Motion For Preliminary Injunction, Exh. A, July 25, 2019 Order Granting Preliminary Injunction).

<sup>2</sup> VI Appx Tab 44, at 878-879 (Notice of Appeal).

<sup>3</sup> See, *URS Corp., supra*, 15 Cal.App.5th at 890: “Should the parties not come to an agreement, they may file a noticed motion for a stay of trial court proceedings (in whole or in part) in the trial court. (See *Veyna v. Orange County Nursery, Inc., supra*, 170 Cal.App.4th at p. 157.) Once in possession of a trial court ruling, a dissatisfied party may seek supersedeas or other extraordinary relief from this court.”

Injunction had been automatically stayed as a result of the Superintendent's timely Appeal and (2) on the basis of that stay, asking the trial court to exercise its discretion to stay all proceedings in the case, pending resolution of the substantial legal questions raised by Superintendent's Appeal of the Preliminary Injunction (the "Motion for Stay").<sup>4</sup>

In ruling on the Superintendent's Motion for Stay, the trial court (a) determined that it lacked jurisdiction to confirm that the Preliminary Injunction had been automatically stayed by the Superintendent's appeal and (b) instructed the parties that the correct remedy would be for the Superintendent to apply for a writ of supersedeas in this Court under *Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1405, fn. 6:

The issue of mandatory/prohibitory is one for the Court of Appeal, which decides whether the order automatically creates a stay or not. This court does not have jurisdiction to "confirm" the automatic stay and no authority has been cited. Where there is a dispute about whether an automatic stay applies, the appropriate remedy is a writ of supersedeas from the appellate court.<sup>5</sup>

On December 18, 2019, one day after the trial court issued its decision, counsel for Real Party in Interest Orange County Board of Education (the "Board") sent a letter to the Superintendent's counsel, threatening that the Board would "apply for an order pursuant to Code of Civil Procedure section 1209(a)(5) holding [the Superintendent] in contempt of the Court" if the Superintendent did not confirm by close of business that he would immediately comply with the Preliminary Injunction

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<sup>4</sup> VI Appx. Tab 46, at 885-886 (Nov. 6, 2019 Stay Motion).

<sup>5</sup> VII Appx. Tab 62, at 1171 (Dec. 17, 2019 Minute Order).

and “cease blocking” the payments of \$85,048.80 for legal fees billed by San Francisco attorney, Gregory Rolen (“Mr. Rolen”). Over the objections of the Superintendent, the Board had hired Mr. Rolen to serve as its outside General Counsel after refusing to use the services of Jeffrey Riel (“Mr. Riel”), the General Counsel for the Orange County Department of Education (“the OCDE”) that the Superintendent had duly hired in accordance with all statutory requirements.<sup>6</sup>

The letter from the Board’s counsel threatening contempt proceedings has placed the Superintendent in the untenable position of either paying the disputed \$85,048.80, despite his claim that the Preliminary Injunction is stayed, or facing the risk that the trial court will hold the Superintendent in contempt because the trial court believes that it has no jurisdiction to find that the Preliminary Injunction is automatically stayed by Code of Civil Procedure section 916.

Accordingly, the Superintendent has been compelled to seek relief from this Court in the form of a writ of supersedeas to establish that the Preliminary Injunction has been automatically stayed by the filing of the Superintendent’s Appeal and to prevent the trial court from attempting to enforce that Injunction.

Mandatory injunctions are subject to an automatic stay during any appeal of the injunction. (*URS Corp. v. Atkinson/Walsh Joint Venture* (2017) 15 Cal.App.5th 872, 884 (“[a]n appeal stays a mandatory but not a prohibitory injunction.”).) The Preliminary Injunction at issue in this

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<sup>6</sup> IV Appx. Tab 15, at 398:19-26 (Mijares Dec. at ¶¶ 24-25); I Appx. Tab 6, at 117:9-20 (Williams Dec. at ¶ 15).



Appeal is clearly a mandatory injunction because it does not preserve the status quo; rather, it requires the Superintendent to repeatedly change the status quo by mandating that he take affirmative steps to approve and “remit payment” for whatever attorney’s fees are billed by Mr. Rolen, even though the Superintendent contends that Mr. Rolen has been unlawfully hired by the Board. In relevant part, the Preliminary Injunction provides as follows:

“Defendant Al Mijares [...is] hereby enjoined and restrained, during the pendency of this action and pending a further order of the Court, ***from refusing to remit payment*** which has been approved by the Executive Committee of the Board to Gregory Rolen and Haight Brown Bonesteel, LLP for legal services performed for the Board.”<sup>7</sup>

The Superintendent, who controls the expenditure of all County education funds under Education Code section 1602, has declined to pay the fees incurred by Mr. Rolen and his firm, Haight Brown Bonesteel, because the Superintendent contends that Mr. Rolen’s services are not “special services” and they are unlawfully duplicating the services of Mr.

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<sup>7</sup> VI Appx Tab 41, at 866:7-11 (Aug. 28, 2019 Notice of Ruling on Motion For Preliminary Injunction, Exh. A, July 25, 2019 Order Granting Preliminary Injunction) emphasis added.

Riel, the General Counsel appointed by the Superintendent to represent the OCDE, as well as both the Superintendent and the Board.<sup>8</sup>

As noted above, the Superintendent's position is that the Preliminary Injunction has been automatically stayed by the Superintendent's Appeal because the Injunction would cause the status quo to be materially altered every time Mr. Rolan submitted a new invoice and the Superintendent was forced to pay it.

Indeed, almost identical language requiring one party to reimburse disputed costs incurred by another party was found to constitute a mandatory injunction in *Davenport v. Blue Cross of California* (1997) 52 Cal.App.4th 435, 443. Just like the Preliminary Injunction in this case, the injunction issued by the trial court in the *Davenport* case was phrased as if it were a prohibitory injunction. There, the defendant insurer was enjoined from "refusing to reimburse" the plaintiff for chemotherapy costs:

"[The Defendant] is enjoined and prohibited from refusing to reimburse plaintiff for the costs of high dose chemotherapy."

(*Ibid.*) The court in *Davenport* held that this injunction was mandatory because it changed the position of the parties by "compelling [the insurer] to authorize and pay for plaintiff's treatment." (*Id.* at 447.)

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<sup>8</sup> The California Attorney General has evaluated the statutory scheme (including Education Code section 35041.5, which requires the Superintendent and the Board to use the same counsel, and Education Code section 1042, which only allows the Board to hire counsel for "special" services), and has concluded that a county board of education is not permitted to hire outside counsel to duplicate services that can otherwise be provided by the general counsel. (86 Ops.Cal.Atty.Gen. 57 (2003) at p. 61.)

The same is true here. Requiring the Superintendent to take affirmative action to pay fees he contends were unlawfully incurred would clearly change the parties' respective positions. Accordingly, the Preliminary Injunction is mandatory, and subject to the automatic stay under the rationale articulated by this Court in *URS Corp.*

The Board, however, asserts that the Preliminary Injunction is prohibitory, despite the *Davenport* case, and despite the absence of any contrary authority. In support of its position, the Board has asserted that the Preliminary Injunction does not require the Superintendent to actually do anything; rather, he is simply required to refrain from interfering with payment by other unidentified "staff" who would supposedly make the payment in the ordinary course of things if the Superintendent did not interfere.<sup>9</sup>

This entirely unsupported assertion is inconsistent with (1) the language of the Preliminary Injunction, (2) the law governing the County's educational funds, and (3) the Board's own motion seeking the Preliminary Injunction:

- (1) As quoted above, the Preliminary Injunction specifically prohibits the Superintendent from "refusing to remit payment," but it does not prohibit him from interfering with someone else's remittance of payment;
- (2) The Education Code provides that the County's education funds "shall be utilized by the county superintendent of

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<sup>9</sup> VI Appx 47 at 907:8-10 (Opposition to Motion re Stay).



schools to pay the charges against the fund as are provided in this code” (Ed. Code § 1602) and further provides that any warrants for payment of such funds “shall be signed by the county superintendent of schools” (Ed. Code § 1604).

Accordingly, it is the Superintendent, himself, who must approve and sign warrants to cause any of the County education funds under his control to be expended; and

- (3) In its own motion for the Preliminary Injunction (the “Injunction Motion”) the Board argued that “[the Superintendent] has a clear legal duty to remit payment for services that are contracted for and received under section 1042.”<sup>10</sup> Nothing in the Board’s Injunction Motion indicated that the Superintendent was preventing any third parties from making the disputed payments to Mr. Rolen.

In light of the foregoing, it is clear that the Board sought and obtained a mandatory Preliminary Injunction that requires the Superintendent to take affirmative steps to approve and sign warrants to pay the invoices of the Board’s outside General counsel, Mr. Rolen. Therefore, the Superintendent respectfully submits that, under Code of Civil Procedure section 916, the Preliminary Injunction has been and remains automatically stayed, pending this Court’s resolution of the Superintendent’s Appeal.

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<sup>10</sup> I Appx Tab 5, at 107:12-13 (Motion for Preliminary Injunction).



Accordingly, the Superintendent seeks a writ of supersedeas to restrain the trial court from entering any order enforcing the Preliminary Injunction during the pendency of the Appeal. As recognized by the trial court, seeking such a writ to clarify the scope of the automatic stay is appropriate under *Dowling*:

Supersedeas is the appropriate remedy when it appears that a party is refusing to acknowledge the applicability of statutory provisions 'automatically' staying a judgment while an appeal is being pursued. [Citations].

(*Dowling, supra*, 85 Cal.App.4th at 1405, fn. 6 (ruling on a writ of supersedeas to determine whether or not the automatic stay applied to a fee award in an anti-SLAPP case); *see also Gallardo v. Specialty Restaurants Corp.* (2000) 84 Cal.App.4th 463, 466 (granting motion in Court of Appeal to clarify stay).)

## **2.0 PETITION FOR WRIT OF SUPERSEDEAS OR OTHER APPROPRIATE RELIEF.**

Petitioner respectfully petitions for a writ of supersedeas to the Superior Court of the County of Orange and alleges as follows:

### **2.1 Authenticity Of Exhibits.**

1. While the record has been filed in this Appeal, at this time it includes only the Reporter's Transcript, because the Superintendent has elected to use an appendix pursuant to Rule of Court 8.124. Accordingly, this Petition is accompanied by the Petitioner's Appendix of Exhibits, which contains each of the items specified in Rule of Court 8.824(4)(B).

2. All exhibits contained in the Petitioner's Appendix of Exhibits are true and correct copies of transcripts from the hearings on

record and original documents on file with the Trial Court. The exhibits are incorporated by reference as though fully set forth in this Petition.

## **2.2 Beneficial Interest Of The Superintendent; Capacities Of Respondent And Real Parties In Interest.**

3. Petitioner Al Mijares is the Orange County Superintendent of Schools, and is named in his official capacity as the defendant and cross-complainant in the action pending in the court below entitled *Orange County Board of Education v. Mijares, etc.*, Orange County Superior Court Case No. 30-2018-01023385 (the “Trial Court Action”).

4. The Superior Court of the State of California for the County of Orange is the Respondent.

5. The Orange County Board of Education is the Real Party in Interest, and is named as the plaintiff and cross-defendant in the Trial Court Action.

## **2.3 Statement Of The Case-Summary Of Material Facts.**

### **2.3.1 The Hiring of Jeffrey Riel As General Counsel For The Superintendent And The Board.**

6. On September 9, 2014, Ronald Wenkart (“Wenkart”), who then served as the General Counsel for both the Board and the Superintendent, issued a memorandum to the Board explaining that the Superintendent has the sole right to select in-house legal counsel for the Superintendent and the Board.<sup>11</sup> Mr. Wenkart’s memorandum noted that the Attorney General has issued an opinion holding that a county

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<sup>11</sup> IV Appx Tab 15, at 403-411 (2019-05-16 Mijares Dec., Exh. 2).

superintendent of schools, and not a county board of education, “is authorized to appoint, discipline, and establish the salaries of the classified county school employees.” (72 Ops.Cal.Atty.Gen. 35 (1989), at p. 7.)

7. That Attorney General’s Opinion also explains that each person employed by a county superintendent of schools “in a position not requiring certification qualifications” shall be employed under the Education Code’s provisions relating to classified employees. (72 Ops.Cal.Atty.Gen. 35 (1989), at p. 6; Education Code § 1311.) Education Code section 35041.5 expressly states that the position of general counsel does not require certification qualifications. Accordingly, it is a classified position.

8. Based on this Opinion, and a review of other statutory authorities and legislative history, Mr. Wenkart concluded that the Superintendent, and not the Board, has the authority to select and hire the General Counsel that will represent both the Superintendent and the Board.<sup>12</sup>

9. On March 22, 2018, Mr. Wenkart announced that, after 35 years of service, he was going to retire on July 31, 2018.<sup>13</sup>

10. The Board claims that one of its members, Ken Williams, expressed concerns to the Superintendent that “the Board needed to participate in the decision on Mr. Wenkart’s replacement,” and that the

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<sup>12</sup> *Id.* at 411.

<sup>13</sup> IV Appx Tab 15, at 393:17-18 (2019-05-16 Mijares Dec. at 2:17-18).



Superintendent “gave assurances that this would be the case.”<sup>14</sup> The Superintendent has testified more specifically that he only agreed that he would consult with the Board’s Executive Committee in finding a replacement for Mr. Wenkart, and would give the Executive Committee a “veto power” over the final candidate.<sup>15</sup>

11. The Board’s Executive Committee consisted of Board President Jack Bedell, Ph.D., and Vice President David Boyd.<sup>16</sup>

12. Executive Committee member and Board president, Dr. Jack Bedell, participated in the “second panel” that interviewed candidates on June 2, 2018, but Mr. Boyd did not participate, having suffered a broken hip.<sup>17</sup> The second panel, including Dr. Bedell, unanimously agreed that Jeffrey Riel (“Mr. Riel”) was the best qualified candidate to replace Mr. Wenkart.<sup>18</sup>

13. However, Mr. Riel was then employed as counsel for the Anaheim Union High School District (the “AUHSD”), which had brought litigation against the Board, the Superintendent, and the OCDE. Accordingly, the second panel also agreed that the Superintendent should

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<sup>14</sup> I Appx Tab 6, at 113:26-28 (2019-04-15 Williams Dec.).

<sup>15</sup> IV Appx Tab 15, at 393:22-24, 394:21-25, and 397:6-10 (2019-05-16 Mijares Dec.).

<sup>16</sup> *Id.* at 394:10-11 (Mijares Dec.).

<sup>17</sup> *Id.* at 396:27-397:3 (Mijares Dec.).

<sup>18</sup> *Id.* at 397:20-22 (Mijares Dec.).

confirm whether Mr. Riel had participated in litigation while employed at AUHSD before making him an offer.<sup>19</sup>

14. The Superintendent then confirmed that Mr. Riel had not participated in litigation while employed at AUHSD, had not recommended litigation, and had not identified litigation counsel.<sup>20</sup> Based on that confirmation, the Superintendent hired Mr. Riel as the General Counsel for the OCDE, the Board, and the Superintendent, and announced the hiring to the Board on June 15, 2018.<sup>21</sup>

**2.3.2 The Board's First Objection To The Hiring Of Mr. Riel, Nearly One Month Later, And The Hiring Of Mr. Rolan.**

15. Almost a month after Mr. Riel was hired as General Counsel, a new majority of the Board was sworn into office on July 11, 2018.<sup>22</sup> That day, for the first time, the Board challenged the Superintendent's retention of Mr. Riel as General Counsel to replace Mr. Wenkart.<sup>23</sup> The Board also attempted to hire Margaret Chidester to act as General Counsel solely for the Board, despite the hiring of Mr. Riel.<sup>24</sup>

16. On July 30, 2018, before Mr. Wenkart retired, he advised the Board that it had no authority under the Education Code to appoint outside

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<sup>19</sup> *Id.* at 397:15-19, 397:22:24 (Mijares Dec.).

<sup>20</sup> *Id.* at 398:2-12 (Mijares Dec.).

<sup>21</sup> *Id.* at 398:12-18 (Mijares Dec.).

<sup>22</sup> *Id.* at 398:19 (Mijares Dec.).

<sup>23</sup> *Id.* at 398:19-21 (Mijares Dec.).

<sup>24</sup> *Id.* at 398:22-23 (Mijares Dec.).

legal counsel, because the Board already had a general counsel.<sup>25</sup>

Accordingly, Mr. Riel contacted Ms. Chidester and informed her that:

(a) the Superintendent's position was that the Board could not hire her as General Counsel, and (b) she already had an existing contract to represent *both* the Board and the Superintendent on special matters, and thus the Superintendent was concerned that there would be a conflict if she represented only the Board.<sup>26</sup>

17. Ms. Chidester then advised the Board that she would not be able to commence work for the Board.<sup>27</sup>

18. Despite Mr. Wenkart's advice, the Board's agenda for September 12, 2018 meeting included Item 7, an action item to retain Greg Rolén to provide "special" legal services and advice pursuant to Education Code section 1042.<sup>28</sup> Contrary to that description, Mr. Rolén's engagement letter to the Board dated September 5, 2018 stated that the scope of his representation would be "General Counsel/Governance Employment Matters."<sup>29</sup>

19. On September 10, 2018, in advance of the September 12, 2018 Board meeting, the Superintendent sent the Board a letter explaining that it did not have authority to hire Mr. Rolén to address unrestricted independent advice to the Board, consistent with Mr. Wenkart's advice on

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<sup>25</sup> I Appx Tab 3, at 71:28-72:5 (Cross-Complaint at ¶ 14).

<sup>26</sup> I Appx Tab 11, at 240:3-6 (Riel Dec.).

<sup>27</sup> I Appx Tab 6, at 116:14-16 (Williams Dec.).

<sup>28</sup> IV Appx Tab 15, at 419 (Mijares Dec., Exh 6).

<sup>29</sup> II Appx Tab 12 at 267 (Hendrick Dec., Exh. 3).



July 30, 2018, and his September 9, 2014 memorandum.<sup>30</sup> Nevertheless, given the dispute regarding the propriety of Mr. Riel's hiring, the Superintendent explained that one of the Orange County Department of Education's other four staff attorneys would be made available to provide legal advice to the Board.<sup>31</sup>

20. On September 10, 2018, the Superintendent also informed Mr. Rolén and his firm that the Board had no authority to hire Mr. Rolén, and that the Superintendent would not process any invoices for payment of Mr. Rolén's fees.

21. Despite the Superintendent's letters, the Board proceeded to hire Mr. Rolén on or about September 12, 2018.<sup>32</sup> Thereafter, Mr. Rolén started providing general legal services for the Board, despite his knowledge that the Superintendent did not intend to pay for his legal fees.<sup>33</sup>

22. Since his hiring, Mr. Rolén has provided legal advice regarding "the Brown Act, charter school applications, "gift of public fund" litigation, financial and budgetary authority, advice concerning the Chino Valley Establishment Clause litigation, constitutional law, inter-district transfer appeals, expulsion appeals, Board governance and contract issues,

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<sup>30</sup> IV Appx Tab 15 at 399:14-20, 419 (Mijares Dec. at ¶ 29, Exh. 6).

<sup>31</sup> IV Appx Tab 15, at 420 (Mijares Dec., Exh. 6).

<sup>32</sup> I Appx Tab 7 at 197:23-24 (2019-04-15 Rolén Dec.).

<sup>33</sup> *Ibid.* at 197:24-198:4 (2019-04-15 Rolén Dec.).

agenda adoption, and Public Records Act requests, as well as providing real-time legal counsel to the Board during board meetings.”<sup>34</sup>

23. These categories of legal advice are routine and duplicative of the advice that is normally given by the Board’s General Counsel,<sup>35</sup> which is consistent with Mr. Rolen’s engagement letter to the Board dated September 5, 2018, which states that the scope of his representation would be “General Counsel/Governance Employment Matters.”<sup>36</sup>

24. At all times, Mr. Riel stood ready, willing, and able to provide similar advice, and, alternatively, the OCDE’s staff attorneys stood ready, willing, and able to provide such advice.<sup>37</sup>

### **2.3.3 The Superintendent Rejects Mr. Rolen’s Invoices.**

25. Starting in October of 2018, Mr. Rolen began submitting monthly invoices to Board member Williams, which were then approved by the Executive Committee of the Board and submitted to the Superintendent for payment.<sup>38</sup>

26. Consistent with his letters of September 10, 2018, the Superintendent refused to pay Mr. Rolen’s invoices.<sup>39</sup>

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<sup>34</sup> I Appx Tab 5 at 102:12-16 (Board’s Motion for Preliminary Injunction); I Appx Tab 7 at 197:23-198:4 (Rolen Dec., ¶ 4).

<sup>35</sup> I Appx Tab 11, at 241:6-242:4 (2019-05-09 Riel Dec.).

<sup>36</sup> II Appx Tab 12, at 267 (Hendrick Dec., Exh. 3).

<sup>37</sup> I Appx Tab 11, at 242:11-13 (2019-05-09 Riel Dec.).

<sup>38</sup> I Appx Tab 7, at 198:5-13 (2019-04-15 Rolen Dec.).

<sup>39</sup> *Id.* at 198:14-17 (2019-04-15 Rolen Dec.).



#### **2.3.4 The Action And The Preliminary Injunction.**

27. The Board commenced this Action by filing a complaint for declaratory and injunctive relief (the “Complaint”) on October 4, 2018.

28. The Complaint seeks injunctive relief to prohibit the Superintendent from (a) “continuing to purportedly employ Mr. Riel on behalf of himself and the Board,” and (b) “interfering with the Board’s receipt of legal advice and counsel from its outside attorney by, for example, refusing to pay counsel’s legal fees and refusing to provide counsel with necessary records and information.”<sup>40</sup> The Complaint also seeks declaratory relief regarding the authority to hire the Board’s general counsel, and the Superintendent’s duty to pay for Mr. Rolen’s fees.<sup>41</sup>

29. On April 16, 2019, the Board filed its motion for the Preliminary Injunction (the “Injunction Motion”), stating in the notice of motion that the Superintendent “has unlawfully refused to remit payment to [the Board’s retained special outside counsel],” and that “[h]e should be compelled to remit that payment.”<sup>42</sup>

30. In the Injunction Motion, the Board argued that it was likely to prevail on the merits of its claim that the Superintendent “has unlawfully failed to execute on his duty to remit payment to a service provider who has been retained by and provided valuable services to the Board,” specifically,

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<sup>40</sup> I Appx Tab 1, at 54:20-55:1, 55:14-23 (Complaint ¶¶ 20-21, 25-26).

<sup>41</sup> *Id.* at 56:7-16, 56:21-57:8 (Complaint at ¶¶ 30-31, 33-34).

<sup>42</sup> I Appx Tab 5, at 91:7-11 (Notice of Motion for Preliminary Injunction).

Mr. Rolén.<sup>43</sup> The Board also argued that the balance of harms weighed in its favor, because it would supposedly lose the services of Mr. Rolén if he were not paid.<sup>44</sup>

31. The Superintendent opposed the motion, arguing that the Board cannot prevail, because (a) it lacks legal authority to hire its own general counsel, (b) its authority to hire special counsel under Education Code section 1042 is limited to special services that cannot be provided by the General Counsel, while Mr. Rolén provides general services duplicative of the General Counsel, and (c) the Board's contract with Mr. Rolén is an ultra vires act and an unlawful gift of public funds.

32. The hearing on the Injunction Motion took place on July 25, 2019. At the hearing, Mr. Brenner, the litigation attorney for the Board stated that the Superintendent "in this situation is just an administrative check writer."<sup>45</sup>

33. The trial court, then stated that "I'm ruling that the Superintendent should write the check to Mr. Rolén, or his firm."<sup>46</sup>

34. The Board's attorney presented the trial court with a written ruling, which the court signed (the "July 25, 2019 Order"),<sup>47</sup> however the

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<sup>43</sup> *Id.* at 184:21-24, 185:3-18 (Motion for Preliminary Injunction).

<sup>44</sup> *Id.* at 109:4-8 (Motion for Preliminary Injunction.)

<sup>45</sup> V Appx Tab 31, at 579:9-10 (2019-07-25 Transcript).

<sup>46</sup> *Id.* at 581:7-8 (2019-07-25 Transcript).

<sup>47</sup> *Id.* at 590:25-591:8, 592:11-24 (2019-07-25 Transcript); VI Appx Tab 41 at 866:7-11 (Aug. 28, 2019 Notice of Ruling on Motion For Preliminary Injunction, Exh. A, July 25, 2019 Order Granting Preliminary Injunction).

trial court also stated that it would revise the tentative ruling on the motion,<sup>48</sup> and then issued a minute order (the “July 25, 2019 Minute Order”) that was limited to payments for fees incurred by Mr. Rolén in connection with the Action.<sup>49</sup>

35. On August 13, 2019, the Superintendent issued a notice of ruling attaching the trial court’s July 25, 2019 Minute Order.<sup>50</sup>

36. On August 23, 2019, in response to an ex parte application by the Board, the trial court clarified that the standing order of the court on the Preliminary Injunction ruling was the written order prepared by the Board.<sup>51</sup>

37. On August 28, 2019, the Board served a notice of ruling attaching a signed copy of the July 25, 2019 Order, which ordered payment of all of Rolén’s fees, not just those incurred in connection with the Action.<sup>52</sup>

38. On September 13, 2019, the Superintendent issued a notice of intent to comply with the Preliminary Injunction, and subsequently paid some of Mr. Rolén’s invoices as ordered by the Court.

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<sup>48</sup> V Appx Tab 31, at 591:12-593:9 (2019-07-25 Transcript) .

<sup>49</sup> V Appx Tab 32, at 595-597 (2019-07-25 Minute Order).

<sup>50</sup> V Appx Tab 34, at 600-605 (2019-08-13 Notice of Ruling).

<sup>51</sup> VI Appx Tab 40, at 859:16-860:16 (2019-08-23 Transcript at 10:16-11:16).

<sup>52</sup> VI Appx Tab 41, at 862-867 (2019-08-28 Not of Ruling re OCBE Mot Prelim INJ).



### **2.3.5 The Superintendent's Appeal And Request For Clarification Of The Stay.**

39. On October 7, 2019, the Superintendent filed a Petition for Writ of Mandate in this Court to challenge the Preliminary Injunction (the "October 7, 2019 Petition").<sup>53</sup>

40. On October 9, 2019, this Court denied the Superintendent's October 7, 2019 Petition.<sup>54</sup>

41. On October 25, 2019, the Superintendent filed the Notice of Appeal in this Appeal.<sup>55</sup>

42. On November 4, 2019, the Superintendent issued a notice that he would no longer comply with the Preliminary Injunction, due to the automatic stay in Code of Civil Procedure section 916.<sup>56</sup> Since issuance of that notice, the Superintendent has not paid any further invoices from Mr. Rolan.

43. On November 6, 2019 the Superintendent filed a motion with the trial court (the "Motion for Stay") to (a) clarify that the Preliminary Injunction was stayed under the automatic stay provision in Code of Civil

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<sup>53</sup> See Petition for Writ of Mandate in *Mijares v. Superior Court*, Court of Appeal Case No. G058418.

<sup>54</sup> See ruling in *Mijares v. Superior Court*, Court of Appeal Case No. G058418.

<sup>55</sup> VI Appx Tab 44, at 878 (October 25, 2019 Notice of Appeal).

<sup>56</sup> VI Appx Tab 45, at 880-882 (November 4, 2019 Notice of Intention of Superintendent to No Longer Comply with July 25, 2019 Court Order).

Procedure section 916, and (b) stay the remainder of the Action pending resolution of this Appeal.<sup>57</sup>

44. On December 17, 2019, the trial court denied the Motion for Stay, finding that (a) it did not have jurisdiction to determine whether or not the Preliminary Injunction was stayed under Code of Civil Procedure section 916, and (b) a stay of the remainder of the Action would not be ordered.<sup>58</sup>

#### **2.4 Statement Of The Case-Summary Of Issues To Be Raised On Appeal.**

45. In connection with the Appeal on the merits of the Preliminary Injunction the Superintendent will argue that the trial court erred in ordering the Preliminary Injunction, because (a) the Board did not establish a probability of prevailing in that, as a matter of law, the Board's hiring of Mr. Rolén was unlawful, and the Superintendent has no duty to pay fees that were not lawfully incurred, and (b) the balance of harms would favor the Superintendent, because issuance of the Preliminary Injunction requires the Superintendent to use funds for unlawful purposes, whereas, in the absence of a Preliminary Injunction, the Board would still have access to legal representation by the duly appointed General Counsel, Mr. Riel, as well as the staff attorneys employed by the OCDE.

46. The Superintendent's position in the Appeal is supported by the authorities cited in the Superintendent's Opposition to the Injunction

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<sup>57</sup> VI Appx Tab 46, at 885-899 (Nov. 6, 2019 Motion for Stay).

<sup>58</sup> VII Appx Tab 62, at 1171-1172 (Dec. 17, 2019 Minute Order Denying Motion for Stay).

Motion<sup>59</sup> and Mr. Wenkart's September 9, 2014 memorandum,<sup>60</sup> including: (a) the Attorney General's Opinion (and the legal analysis set forth therein), which establishes that a county superintendent of schools, and not a county board of education, "is authorized to appoint, discipline, and establish the salaries of the classified county school employees," (72 Ops.Cal.Atty.Gen. 35 (1989), at p. 7); (b) Education Code § 1311, which establishes that each person employed by a county superintendent of schools "in a position not requiring certification qualifications" shall be employed under the Education Code's provisions relating to classified employees; (c) Education Code § 35041.5, which provides that the position of general counsel does not require certification qualifications, making it a classified position; (d) the Attorney General's Opinion (and the legal analysis set forth therein) establishing that Education Code section 1042 does not give a county board of education the authority to hire outside counsel to duplicate services provided by the in-house General Counsel; and (e) the facts and circumstances in this case discussed above, which establish that Mr. Rolén was hired to perform general counsel services as to which there is no conflict with Mr. Riel or the staff attorneys at the OCDE.

## **2.5 Basis For Writ Relief.**

47. As a matter of law, the Preliminary Injunction is a mandatory Injunction, requiring the Superintendent to take affirmative action to pay legal fees to Mr. Rolén from the County's education funds, which are

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<sup>59</sup> I Appx Tab 10, at 224-234 (Opposition to Preliminary Injunction Motion).

<sup>60</sup> IV Appx Tab 15, at 403-411 (May 16, 2019 Mijares Dec., Exh. 2).



statutorily dedicated to the Superintendent's use for the purposes authorized by the Education Code.

48. Code of Civil Procedure section 916 stays mandatory, but not preliminary injunctions. Because the Preliminary Injunction is mandatory, it is automatically stayed by the Superintendent's Appeal.

49. On December 18, 2019, the Board's attorney sent a letter to the Superintendent's counsel, stating the Board's intention to move for a finding of contempt based on the Superintendent's refusal to pay Mr. Rolen's invoices after the filing of the Appeal.<sup>61</sup>

50. Given the trial court's holding that it lacks jurisdiction to determine whether or not the automatic stay applies to the Preliminary Injunction, a writ of supersedeas is necessary and proper to prevent the trial court from enforcing the Preliminary Injunction by finding the Superintendent in contempt for failing to pay Mr. Rolen's invoices.

## **2.6 Prayer.**

51. WHEREFORE, the Superintendent prays that the Court:

52. Issue a writ of supersedeas restraining the Trial Court from:  
(a) finding the District in contempt based on a failure to comply with the Preliminary Injunction, or (b) otherwise taking any action to enforce the Preliminary Injunction;

53. Issue a temporary stay on the enforcement of the Preliminary Injunction pending the resolution of this Petition;

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<sup>61</sup> VII Appx Tab 63, at 1173-1174 (Dec. 18, 2019 Letter From Board Counsel To Superintendent's Counsel).

54. Award the Superintendent his costs pursuant to Rule 8.493(a) of the California Rules of Court; and

55. Grant such other and further relief as this Court deems just and proper.

Dated: December 24, 2019

Connor, Fletcher & Hedenkamp LLP

By: 

Edmond M. Connor  
Douglas A. Hedenkamp  
Attorneys For Defendant, Appellant,  
and Petitioner Al Mijares, Ph.D.,  
Orange County Superintendent of  
Schools

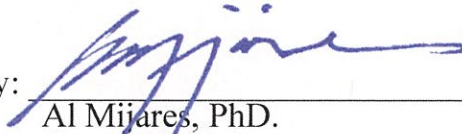


### 3.0 VERIFICATION

I am the Orange County Superintendent of Schools and a party to this action. I have read the foregoing Petition For Writ of Supersedeas or Other Appropriate Relief and know its contents. The factual statements made in the Petition For Writ of Supersedeas or Other Appropriate Relief are true based on my own knowledge and as to the legal arguments presented therein I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 24<sup>th</sup> day of December at Costa Mesa, California.

By:   
Al Mijares, PhD.  
Orange County  
Superintendent of Schools

#### 4.0 MEMORANDUM OF POINTS AND AUTHORITIES

##### 4.1 Standard Of Review/Decision – The Automatic Stay In Code Of Civil Procedure Section 916 Applies To Mandatory Injunctions, And Can Be Enforced By Supersedeas.

As this Court pointed out in *URS Corp.*, *supra*, 15 Cal.App.5th at 879, orders granting or denying preliminary injunctions are immediately appealable under Code of Civil Procedure section 904.1(a)(6). This Court also pointed out in *URS Corp.* that there are two types of injunctions, those that compel parties to “‘refrain from a particular act’—a prohibitory injunction,” and those that compel parties to “‘perform an ‘affirmative act’—a mandatory injunction. (*Id.* at 884.)

Under Code of Civil Procedure section 916, the filing of an appeal automatically stays enforcement of the order appealed from, but, when this rule is applied to injunctions, it is not susceptible to a “facile application.” (*URS Corp.*, 15 Cal.App.5th at 884.) Instead, under longstanding authority, “[a]n appeal stays a mandatory but not a prohibitory injunction.” (*Ibid.* (quoting *Kettenhofen v. Superior Court* (1961) 55 Cal.2d 189, 191).)

To determine whether an injunction is mandatory or prohibitory, courts are not “‘bound by the form of the [injunction] order, but will look to its substance to determine its real nature.’” (*Ibid.* (quoting *Feinberg v. One Doe Co.* (1939) 14 Cal.2d 24, 28.) An order is prohibitory in nature “‘if its effect is to leave the parties in the same position as they were prior to the entry of judgment.’” (*Ibid.* at 884 (quoting *Musicians Club of L.A. v. Superior Court* (1958) 165 Cal.App.2d 67, 71.) An order is mandatory if its effect “‘would be to change the position of the parties and compel them to act in accordance with the judgment.’” (*Id.*)

The Court in *URS Corp.* held that the order in that case—an order disqualifying counsel—was mandatory, and thus subject to the automatic stay. (*Id.* at 886-887.) Accordingly, the Court granted a writ of supersedeas staying enforcement of the order pending resolution of the appeal, thereby implicitly acknowledging that supersedeas is an appropriate remedy where the parties disagree over the scope of the automatic stay. (*Id.* at 890.) Similarly, the court in *Dowling*, explicitly acknowledged that supersedeas is available to clarify the scope of the automatic stay.

Supersedeas is the appropriate remedy when it appears that a party is refusing to acknowledge the applicability of statutory provisions 'automatically' staying a judgment while an appeal is being pursued. [Citations].

(*Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1405, fn. 6 (ruling on a writ of supersedeas to determine whether or not the automatic stay applied to a fee award in an anti-SLAPP case); *see also Gallardo v. Specialty Restaurants Corp.* (2000) 84 Cal.App.4th 463, 466 (granting motion in Court of Appeal to clarify stay).)

## **4.2 Legal Argument**

### **4.2.1 The Preliminary Injunction Is Mandatory And Subject To The Automatic Stay.**

Applying the test articulated in *URS Corp.*, it is clear that the Preliminary Injunction in this case is mandatory, rather than prohibitory, since it requires the Superintendent to take affirmative action to comply with the trial court's ruling—specifically, by paying the invoices submitted by Mr. Rolén. This is an affirmative act that the Superintendent was not performing prior to the issuance of the Preliminary Injunction, and thus it is a change in the status quo.



This is even more clear in light of the fact that the language of the Preliminary Injunction is nearly identical to the language that was found to constitute a mandatory injunction in *Davenport*. The Court in *Davenport* articulated a test that is substantively identical to this Court's test in *URS Corp.*:

“[A]n injunction is prohibitory if it requires a person to refrain from a particular act and mandatory if it compels performance of an affirmative act that changes the position of the parties.”

(*Davenport v. Blue Cross of California* (1997) 52 Cal.App.4th 435, 446.)

Like this Court did in *URS Corp.*, the court in *Davenport* also acknowledged that “[t]he substance of the injunction, not the form, determines whether it is mandatory or prohibitory.” (*Id.* at 447.) Accordingly, in *Davenport*, the court held that an injunction against an insurer was mandatory, even though it was phrased as a prohibition. Specifically, the injunction stated that the insurer was “prohibited from refusing to authorize, preauthorize or consent to the performance of high-dose chemotherapy [...] and prohibited from refusing to reimburse plaintiff for the costs of high dose chemotherapy[.]” (*Id.* at 443.) Since this “prohibition” required the insurer to authorize and reimburse the chemotherapy costs, the Court held that it was a mandatory injunction that “ordered the insurer to perform affirmative acts which would change the position of the parties.” (*Id.* at 447.)

Likewise, in this case, while the Preliminary Injunction Order is phrased as a prohibition, it effectively orders the Superintendent to pay for the Board's legal fees, thereby changing the position of the parties:

“Defendant Al Mijares [...] hereby enjoined and restrained, during the pendency of this action and pending a further order of the Court, from refusing to remit payment which has been approved by the Executive Committee of the Board to Gregory Rolen and Haight Brown Bonesteel, LLP for legal services performed for the Board.”<sup>62</sup>

Accordingly, like the injunction in *Davenport*, the Preliminary Injunction is mandatory, not prohibitory. Under *URS Corp.*, this means that the Preliminary Injunction Order was automatically stayed by the filing of the Superintendent’s Appeal. (See *URS Corp.*, *supra*, 15 Cal.App.5th at 883; *Reed v. Superior Court* (2001) 92 Cal.App.4th 448, 455.)

#### **4.2.2 The Preliminary Injunction Does Not Prohibit “Interference” By The Superintendent With Payment By Any Third Party.**

In the trial court, the Board made the unfounded claim that the “status quo” is the regular payment of the Board’s approved expenses, and that the Preliminary Injunction merely prevents the Superintendent from “interfering” with regular payments that would ordinarily be made by other unidentified staff members at the OCDE. Specifically, the Board submitted a declaration from a Board member that purports to show that the Superintendent is not refusing to pay legal bills, himself; rather, he is somehow preventing other (unidentified) staff members from paying those bills:

“Generally, when the Board submits vendor bills to Mijares’ staff, those bills are regularly paid. However, to the Board’s

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<sup>62</sup> VI Appx Tab 41, at 866:7-11 (Aug. 28, 2019 Notice of Ruling on Motion For Preliminary Injunction, Exh. A, July 25, 2019 Order Granting Preliminary Injunction).

knowledge, in this situation, Mijares interfered with the usual process and instructed that his staff not pay those bills.”<sup>63</sup>

This claim, which clearly lacks foundation as to personal knowledge, is inconsistent with the language of the Preliminary Injunction, the state law governing the County’s education funds, and the Board’s own statements that were made in seeking the Preliminary Injunction.

The language of the Preliminary Injunction is clear—it does not prohibit the Superintendent from “interfering” with anything. Instead, it prohibits the Superintendent from refusing to remit payments:

“Defendant Al Mijares [...is] hereby enjoined and restrained, during the pendency of this action and pending a further order of the Court, **from refusing to remit payment** which has been approved by the Executive Committee of the Board to Gregory Rolen and Haight Brown Bonesteel, LLP for legal services performed for the Board.”<sup>64</sup>

This double negative (prohibiting a refusal to act) obviously amounts to an affirmative command to the Superintendent to remit payments.

Moreover, under sections 1602 and 1604 of the Education Code, any invoices submitted by the Board require affirmative action by the Superintendent in order for them to be approved for payment and then actually paid. Specifically, Education Code section 1602 provides that the County’s education funds “shall be utilized by the county superintendent of schools to pay the charges provided in this code,” and section 1604 states

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<sup>63</sup> VI Appx 47 at 907:8-10 (Opposition to Motion re Stay), citations omitted.

<sup>64</sup> VI Appx Tab 41 at 866:7-11 (Aug. 28, 2019 Notice of Ruling on Motion For Preliminary Injunction, Exh. A, July 25, 2019 Order Granting Preliminary Injunction), emphasis added.



that in counties (like Orange County<sup>65</sup>) that have elected to transfer educational functions to the board of education, the superintendent of schools assumes the role of the County auditor in approving and signing warrants for payments from the fund. As a matter of law, therefore, the Superintendent cannot comply with the Preliminary Injunction merely by refraining from “interfering” with the purported actions of unknown third parties in allegedly paying the disputed legal fees; rather, he must approve and pay those fees, himself.

Of course, the Board and its attorneys are fully aware that the Preliminary Injunction requires the Superintendent to take the affirmative act of remitting payment because: (a) they drafted the language for the Preliminary Injunction, and included it in the proposed order that was presented to and signed by the trial court,<sup>66</sup> and (b) when they sought the Preliminary Injunction, they repeatedly acknowledged that it is the Superintendent, himself, who must remit the disputed payments:

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<sup>65</sup> See Request for Judicial Notice, filed herewith, at Exhibit 1 (June 7, 1977 Resolution of the Board of Supervisors of Orange County, California) at 1:26-2:1, 2:18-3:1. The request for judicial notice was denied in the trial court, but solely on the grounds that the Requested Document was not relevant to the court’s determination of that jurisdictional issue. (VII Appx Tab 62 at 1171-1172.) Since that jurisdictional ground does not apply in the Court of Appeal, the Motion for Judicial Notice filed herewith should be granted despite the fact that it was denied in the trial court.

<sup>66</sup> V Appx Tab 31 at 590:25-591:8, 592:11-24 (2019-07-25 Transcript); VI Appx Tab 41, at 866:7-11 (Aug. 28, 2019 Notice of Ruling on Motion For Preliminary Injunction, Exh. A, July 25, 2019 Order Granting Preliminary Injunction).



“[The Superintendent] stated explicitly that he would not remit payment on Rolén’s invoices unless and until a court orders him to do so.”<sup>67</sup>

“The Board [...] has explicitly directed [the Superintendent] to remit payment to Rolén for his services.”<sup>68</sup>

“[The Superintendent] has a clear legal duty to remit payment for services that are contracted for and received under section 1042.”<sup>69</sup>

“[The Superintendent] has unlawfully failed to execute on his duty to remit payment to a service provider who has been retained by and provided valuable services to the Board.”<sup>70</sup>

“[The Superintendent] in this situation is just an administrative check writer.”<sup>71</sup>

Even the trial court, itself, made it clear that the Preliminary Injunction does not prohibit the Superintendent from interfering with payment by other third parties, rather, it expressly requires him to make the payment, himself:

“I’m ruling that the Superintendent should write the check to Mr. Rolén, or his firm.”<sup>72</sup>

Given that the trial court and the Board both intended and understood that the Preliminary Injunction would require the Superintendent to take affirmative action to remit payments, the *Davenport*

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<sup>67</sup> I Appx Tab 5, at 103:12-14 (Motion for Preliminary Injunction).

<sup>68</sup> *Id.* at 105:11-13 (Motion for Preliminary Injunction).

<sup>69</sup> *Id.* at 107:12-13 (Motion for Preliminary Injunction).

<sup>70</sup> *Id.* at 104:21-24 (Motion for Preliminary Injunction).

<sup>71</sup> V Appx Tab 31, at 579:9-10 (2019-07-25 Transcript).

<sup>72</sup> V Appx Tab 31, at 581:7-8 (2019-07-25 Transcript).

case cited in the Motion is directly analogous to this Action, and leads inexorably to the conclusion that the Preliminary Injunction has been automatically stayed by the Superintendent's Appeal.

**4.2.3 The Superintendent Is Not Estopped From Arguing That The Preliminary Injunction Has Been Automatically Stayed By The Superintendent's Appeal.**

In the trial court, the Board also took the position that the Superintendent could not assert that the Preliminary Injunction has been automatically stayed, because he allegedly "conceded" in his October 4, 2019 Petition that he would be required to continue paying invoices while an appeal was pending. To the contrary, the doctrine of judicial estoppel only applies where a party takes a "factual" position in order to seek relief, and is successful in obtaining that relief. (*ABF Capital Corp. v. Berglass* (2005) 130 Cal.App.4th 825, 832-833.) Where the party does not obtain the relief it initially sought, it is free to change its position at a later date. (*Ibid.*) Similarly, when the position is a legal one, rather than a factual one, the doctrine does not apply at all. (*Ibid.*)

Here, the Superintendent's statement regarding the payment of invoices during the Appeal was a legal position taken in a petition for writ of mandate, which was denied by this Court. (See ruling in *Mijares v. Superior Court*, Court of Appeal Case No. G058418.) Specifically, the Superintendent argued that an appeal of the Preliminary Injunction would be inadequate because he would "experience irreparable injury by the continued payment of invoices from Mr. Rolen for duplicative services already required to be performed by the OCDE General Legal Services

Division.”<sup>73</sup> Under *ABF Capital Corp.*, the Superintendent is not estopped from contradicting this prior statement, because (a) it is a legal argument, not a statement of fact, and (b) this Court denied the October 4 2019 Petition, after which the Superintendent changed his legal position in light of additional legal research.

Specifically, after the October 4, 2019 Petition was denied, the Superintendent retained additional appellate counsel, Connor, Fletcher & Hedenkamp. Those attorneys have revisited this legal issue and have come to a different conclusion. Based on the *Davenport* case and the other legal authorities cited in the moving papers, it is clear that the automatic stay pending appeal does apply to the Preliminary Injunction.

**4.2.1 The Board’s Incorrect Claim That It Will Lose Its “Right” To Its Attorney Of Choice Does Not Transform The Mandatory Injunction Into A Prohibitory Injunction.**

In the trial court, the Board has repeatedly claimed that, if the Superintendent does not pay Mr. Rolén’s fees, the Board will be deprived of its right to “receive legal services from its counsel of choice.” As explained below, this argument is incorrect, but even if it were not, it does not somehow transform the Preliminary Injunction into a prohibitory injunction.

The Court in *URS Corp.* held that a disqualification order depriving the appellant of its attorney of choice resulted in a change in the status quo because the “status quo” in that case consisted of the appellant using (and

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<sup>73</sup> VI Appx Tab 51, at 1050 (Halsing Dec., Exh. C).



presumably paying for) its own attorney, and the order upset that status quo by requiring the appellant to “hire replacement counsel.” (*URS Corp.*, *supra*, 15 Cal.App.5th at 886.) Here, the “status quo” consists of Mr. Rolén serving as the Board’s attorney for approximately a year with full notice and knowledge that the Superintendent objected to his engagement as being unlawful and also declined to pay his fees.<sup>74</sup> The Preliminary Injunction does not preserve that status quo, it reverses it, by requiring the Superintendent to take the affirmative act of remitting payments for Mr. Rolén’s invoices.

Similarly, a stay of the Preliminary Injunction will not upset the status quo, as the Board will continue to be able to use Mr. Rolén’s services as long as he is willing to provide them on the contingency that he will only be paid if and when the Board prevails in this Action. Since the Superintendent gave Mr. Rolén written notice on September 10, 2018 that he would not pay Mr. Rolén’s fees,<sup>75</sup> and Mr. Rolén was not retained until September 12, 2018,<sup>76</sup> that was the “status quo” when Mr. Rolén signed on as counsel for the Board with no guarantee that he would be paid for his services. Indeed, an entire year went by without Mr. Rolén being paid by the Superintendent before the Board sought the Preliminary Injunction and it was finalized in August 2019.

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<sup>74</sup> I Appx Tab 7, at 197:15-22, 202 (Rolén Dec., and Exh. A).

<sup>75</sup> *Ibid.*

<sup>76</sup> *Id.* at 197:23-24 (Rolén Dec.).

Moreover, the claim that the Superintendent is depriving the Board of its counsel of choice is incorrect. The argument ignores the facts that: (a) the Board is free to obtain routine legal services from the staff attorneys at the OCDE, who were hired in the ordinary course before any of this controversy arose, and (b) the Superintendent has continued to pay fees incurred by the Board for truly “special” legal services, such as the fees for the Board’s litigation counsel in this Action.

This argument also incorrectly assumes that the Board has the right to choose who will act as its general counsel for routine legal issues, which is one of the very issues that is disputed in the Superintendent’s Appeal. To the contrary, unlike private litigants, there are many instances where the governing board of a public agency is not free to choose its own attorney, such as where a city attorney holds an elected position. Here, the applicable statute clearly requires the Board and the Superintendent to use the same general counsel:

“The county board of education and the superintendent of schools of the same county shall appoint the same legal counsel.”

(Cal. Ed. Code section 35041.5.) Moreover, the Superintendent will argue in his Appeal that the Education Code vests the discretion to select and hire that attorney in the Superintendent, and not the Board.<sup>77</sup> (Education Code. §§ 1293, 1294, 1294.5, 1311, 1312; 72 Ops. Cal. Atty. Gen. 25 (1989); 85 Ops. Cal. Atty. Gen. 77 (2002).) Enforcing the Preliminary Injunction on

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<sup>77</sup> I Appx Tab 10, at 224:22-225:15 (Opposition to Motion for Preliminary Injunction).

the grounds that the Board has an absolute right to hire the general counsel of its choice would be to resolve the merits of the Appeal before the first brief were even filed.

Moreover, even if the Board were a private litigant with an absolute right to choose its own counsel, that would not give the Board the absolute right to compel the Superintendent to pay for the Board's counsel of choice. As explained above, control over the payment of the County's education funds is clearly vested in the Superintendent under Education Code sections 1602 and 1604.

Compliance with the Preliminary Injunction would force the Superintendent to use that control to make affirmative payments inconsistent with the positions he is taking in the Appeal, thereby potentially moot the relief sought. Indeed, in *URS Corp.*, this Court held that enforcing the disqualification order might moot the appeal, since once a new attorney were selected and brought up to speed in the underlying litigation, the appellant might decide that it is not worth it to reinsert the original attorney after the disqualification order is overturned.

Similarly, here, if the Superintendent were to prevail in the Appeal, he would not automatically recover the payments made in the interim. To the contrary, Mr. Rolan is not a party to this Action, and thus the Superintendent may be forced to file a separate action to recover from Mr. Rolan any fees paid during the Appeal. Like the appellant in *URS Corp.*, the Superintendent could decide that pursuing Mr. Rolan for the interim fees is not worth the cost, thereby depriving him of the very relief sought in the Appeal.



Accordingly, despite Board's assertion of the "right" to its counsel of choice, the Preliminary Injunction is still a mandatory injunction that is stayed until the parties' positions are resolved in the Appeal.

**4.2.2 To The Extent The Order Is Deemed To Be One Requiring The Payment Of Money Under CCP §917.1, The Superintendent Is Exempt From The Undertaking Requirement.**

Code of Civil Procedure section 917.1 provides that, unless an undertaking is given, an appeal does not stay enforcement of an order for "[m]oney or the payment of money, whether consisting of a special fund or not, and whether payable by the appellant or another party to the action."

The Superintendent has been unable to locate any California authority regarding whether this section applies to preliminary injunctions ordering the payment of money. To the extent this section does apply to preliminary injunctions, it simply confirms that an injunction requiring the payment of money is mandatory, and subject to a stay on appeal. Moreover, to the extent this section applies to the Preliminary Injunction in this case, the Superintendent is exempt from the requirement of an undertaking under Code of Civil Procedure section 995.220, which provides that appellate bonds need not be given by a "an officer of the local public entity in an official capacity," to obtain a stay of enforcement of a judgment on appeal.

**5.0 CONCLUSION**

In light of the foregoing, the Superintendent respectfully requests that the Court issue a writ of supersedeas restraining the trial court from taking any action to enforce the Preliminary Injunction during the pendency

of the Appeal, including, but not limited to, issuing any finding of contempt based on the Superintendent's refusal to comply with the Preliminary Injunction during the pendency of the Appeal.

Dated: December 24, 2019

Respectfully submitted,

Connor, Fletcher & Hedenkamp LLP  
Edmond M. Connor  
Douglas A. Hedenkamp

By: 

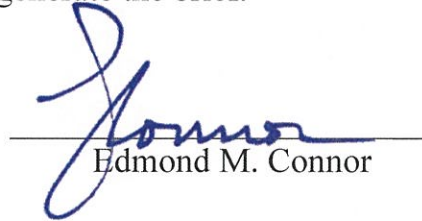
Edmond M. Connor  
Attorneys For Defendant, Appellant,  
and Petitioner Al Mijares, Ph.D.,  
Orange County Superintendent of  
Schools

## 6.0 CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 8.204(c)(1))

The text of this Petition, including footnotes, exclusive of the tables, cover page, Certificate of Interested Entities or Persons, signature block, and this certificate, consists of 9,686 words as counted by the Microsoft Word word-processing program used to generate the brief.

Dated: December 24, 2019



Edmond M. Connor

**PROOF OF SERVICE BY TRUEFILING AND MAIL**

Court of Appeal - Fourth Appellate District - Division Three

I am a citizen of the United States and an employee in the County of Orange. I am over the age of eighteen (18) years and not a party to this action. My business address is: Connor, Fletcher & Hedenkamp LLP, 2211 Michelson Drive, Suite 1100, Irvine, California 92612 and my email address is [mdinkel@businesslit.com](mailto:mdinkel@businesslit.com).

On December 24, 2019, I served the attached document(s) described as:

**PETITION FOR WRIT OF SUPERSEDEAS OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES**

☒ (By Electronic Service) I caused said document to be E-Served through **TrueFiling** by electronically submitting a true and correct copy through the **TrueFiling** electronic system to the email addresses set forth below. The file transaction was reported as completed and a transaction receipt will be maintained at our office as confirmation of proof of service

**NAME AND ADDRESS OF PERSON SERVED VIA TRUEFILING:**

Jonathan Brenner Kristin M. Halsing EPSTEIN BECKER & GREEN, P.C. 1925 Century Park East, Suite 500 Los Angeles, CA 90067 <a href="mailto:jbrenner@ebglaw.com">jbrenner@ebglaw.com</a> <a href="mailto:khalsing@ebglaw.com">khalsing@ebglaw.com</a>	Attorneys for Plaintiff Orange County Board of Education
George W. ("Bill") Shaeffer, Jr. Samantha Lamm Rutan & Tucker, LLP 611 Anton Blvd. 14 <sup>th</sup> Floor Costa Mesa, CA 92626 <a href="mailto:bshaeffer@rutan.com">bshaeffer@rutan.com</a>	Attorneys for Defendant and Appellant Al Mijares, Ph.D., Orange County Superintendent of Schools



☒ **(By Regular Mail)** I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. [CCP§1013]

**NAME AND ADDRESS OF PERSON SERVED VIA U.S. MAIL:**

Orange County Superior Court Hon. James L. Crandall - Dept C33 Re: 30-2018-01023385 700 Civic Center Drive West Santa Ana, CA 92701	Per California Rules of Court
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**By Electronic Submission:** On the date hereof I served a copy of the above referenced document on the following by electronically submitting the document through the websites listed below:

<b>California Supreme Court via the Fourth Appellate District’s Electronic Document Submission Website TrueFiling</b>	Per California Rules of Court, rule 8.212(c)(2)
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 24th day of December, 2019, at Irvine, California.

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Meredith A Dinkel

WB

ORANGE COUNTY BOARD OF EDUCATION

BOARD AGENDA ITEM

DATE: January 22, 2020  
TO: Nina Boyd, Associate Superintendent  
FROM: Ken Williams, D.O., Board Vice President  
SUBJECT: Resolution #02-20  
National Black History Month

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RECOMMENDATION:

Adopt Resolution #02-20 to recognize February 2020 as National Black History Month.



RESOLUTION OF THE BOARD OF EDUCATION  
ORANGE COUNTY, CALIFORNIA  
National Black History Month

**Whereas** in 1776, the American Founding Fathers and people envisioned a new nation dedicated to the proposition stated in the Declaration of Independence that *“all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness . . .”*;

**Whereas** Africans were first brought involuntarily to the shores of America as early as the 17th century;

**Whereas** African Americans suffered enslavement and subsequently faced the injustices of racism, and denial of the basic and fundamental rights of citizenship;

**Whereas**, only since the landmark Supreme Court case of Brown v. Board of Education in 1954 have African Americans been given the constitutional right to a free public education in integrated schools;

**Whereas**, the birthdays of Abraham Lincoln and Frederick Douglass inspired the creation of Negro History Week, the precursor to Black History Month;

**Whereas**, since 1926, and the creation of Negro History Week by Dr. Carter G. Woodson, the accomplishments of persons of African descent have been recognized each February; and

**Whereas** the contributions of African Americans from all walks of life throughout the history of the United States reflect the greatness of the United States;

**Whereas**, the month of February is observed nationally as Black History Month to share the accomplishments black Americans have made and continue to offer to this nation; and

**Whereas**, Black History Month acknowledges and honors numerous past and present educators, scientists, activists, pioneers, leaders, artists, inventors, entrepreneurs, and elders with special ceremonies and activities; and

**Now, Therefore, BE IT RESOLVED** by the Orange County Board of Education, that we commemorate and honor the achievements of black Americans and their role in the development and history of our great nation, and we join in recognizing the annual celebration of Black History Month.

AYES:

NOES:

ABSENT:

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, Mari Barke, President to 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 5<sup>th</sup> day of February 2020.

IN WITNESS THEREOF, I have hereunto set my hand and seal this 5<sup>th</sup> day of February 2020.

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Mari Barke, President  
Orange County Board of Education



ORANGE COUNTY BOARD OF EDUCATION

BOARD AGENDA ITEM

DATE: January 22, 2020  
TO: Nina Boyd, Associate Superintendent  
FROM: Darou Sisavath, Recording Clerk  
SUBJECT: Resolution #03-20  
Arts Education Month

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RECOMMENDATION:

Adopt Resolution #03-20 to recognize March 2020 as Arts Education Month.

**RESOLUTION OF THE BOARD OF EDUCATION  
ORANGE COUNTY, CALIFORNIA**

**MARCH 2020  
ARTS EDUCATION MONTH**

**WHEREAS**, Arts Education, which includes dance, music, theatre, and the visual arts, is an essential part of basic education for all students, kindergarten through grade twelve, to provide for balanced learning and to develop the full potential of their minds; and

**WHEREAS**, through well-planned instruction and activities in the arts, children develop initiative, creative ability, self-expression, self-reflection, thinking skills, discipline, a heightened appreciation of beauty and cross-cultural understanding; and

**WHEREAS**, experience in the arts develops insights and abilities central to the experience of life, and are collectively one of the most important repositories of culture; and

**WHEREAS**, many national and state professional educational associates hold celebrations in March focused on students' participation in the arts; and

**WHEREAS**, these celebrations give California schools a unique opportunity to focus on the value of the arts for all students, to foster cross-cultural understanding, to give recognition to the state's outstanding young artists, to focus on careers in the arts available to California students, and to enhance public support for this important part of our curriculum; and

**WHEREAS**, the California State Board of Education states in its Arts Education Policy adopted in July 1989 that each student should receive a high quality, comprehensive arts education program based on the adopted visual and performing arts curriculum documents.

**NOW, THEREFORE, BE IT RESOLVED**, on the 5<sup>th</sup> day of February, 2020 that the Orange County Board of Education proclaims the month of March 2020 as the Arts Education Month and encourages all educational communities to celebrate the arts with meaningful student activities and programs that demonstrate learning and understanding in the visual and performing arts; and

**BE IT FURTHER RESOLVED**, that educational communities involve parents and community representatives in these activities and programs that demonstrate learning and understanding in the visual and performing arts and the Orange County Board of Education will distribute suitably prepared copies of this resolution to all school districts in the County of Orange.

**AYES:**

**NOES:**

**ABSENT:**

**STATE OF CALIFORNIA, COUNTY OF ORANGE**

I, **Mari Barke**, President to 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 5<sup>th</sup> day of February 2020.

**IN WITNESS THEREOF**, I have hereunto set my hand and seal this 5<sup>th</sup> day of February 2020.

\_\_\_\_\_  
Mari Barke, President  
Orange County Board of Education

7B

ORANGE COUNTY BOARD OF EDUCATION

BOARD AGENDA ITEM

DATE: December 11, 2019  
TO: Nina Boyd, Associate Superintendent  
FROM: Renee Hendrick, Associate Superintendent  
SUBJECT: 2019-2020 First Interim Report

As required by Education Code Section 1240 (j) county offices of education are required to submit to the Superintendent of Public Instruction a First Period Interim Report, Second Period Interim Report, and Annual Report of the county office's financial status.

The superintendent shall certify in writing whether or not the county office of education is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for two subsequent fiscal years. The certifications shall be classified as positive, qualified, or negative, pursuant to standards prescribed by the Superintendent of Public Instruction.

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RECOMMENDATION:

Approve the 2019-20 First Interim Report, which has been certified as positive by the County Superintendent of Schools.

RH:sh

**ORANGE COUNTY BOARD OF  
BOARD AGENDA ITI**

Item: Staff Recommendations #9  
February 5, 2020  
[X] Mailed [ ] Distributed at meeting

YTB

**DATE:** January 22, 2020  
**TO:** Nina Boyd, Associate Superintendent  
**FROM:** Kelly Gaughran, Director, Charter Schools  
Aracely Chastain, Administrator, Charter Schools  
**SUBJECT:** Board Action – Irvine International Academy Appeal

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**DESCRIPTION:**

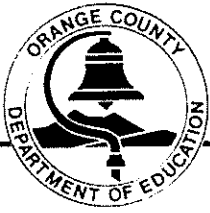
On December 11, 2019, Orange County Board of Education (OCBE) accepted a submission for an appeal for the denial of Irvine International Academy's charter school petition by the Irvine Unified School District for an initial charter term of July 1, 2020 to June 30, 2025. OCBE held a public hearing on January 8, 2020 to consider the level of support for the charter school.

The Orange County Board of Education traditionally has had three options for action regarding a charter petition on appeal:

1. Option One: Approve the charter petition as written.
  2. Option Two: Approve the charter petition with conditions. This action would result in approval of the charter and require the execution of an Agreement to address the issues outlined in the Staff Report and Findings of Fact and establish appropriate timelines for the petitioners to meet the conditions as specified.
  3. Option Three: Deny the charter petition.
- 

**RECOMMENDATION:**

Based on a comprehensive review of the petition as submitted, information presented during the public hearing, and an in-person clarification meeting, Orange County Department of Education staff determined the petition does not meet the requirements of the Charter Schools Act for approval and recommends the Orange County Board of Education deny the Irvine International Academy charter school petition.



# MEMO

## ORANGE COUNTY DEPARTMENT OF EDUCATION

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January 22, 2020

**To:** Members, Orange County Board of Education

**From:** Orange County Department of Education Charter Schools Unit

**Re:** Staff Report and Findings of Fact – Irvine International Academy

Orange County Department of Education (OCDE) staff conducted a review of the Irvine International Academy charter school petition presented on appeal following action by the governing board of the Irvine Unified School District, and this report constitutes the findings of fact required by the Charter Schools Act. This report does not exhaustively list every concern, error, omission or deficiency in the submitted charter petition and focuses on the most significant concerns.

Irvine International Academy proposes to be a seat-based charter school, serving students from transitional kindergarten through grade eight. The school's educational model integrates Mandarin language immersion utilizing a peer tutoring approach in the classroom.

Based on the factual findings with regard to the charter petition set forth in this Staff Report and information gathered throughout the entire review process, which included a clarification meeting held with charter school representatives on January 14, 2020, OCDE staff recommends that Orange County Board of Education (OCBE) deny the Irvine International Academy charter school petition.

### SYNOPSIS OF REVIEW<sup>1</sup>

- I. The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
- II. The petition does not contain reasonably comprehensive descriptions of the required elements under EC § 47605(b).
- III. The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

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<sup>1</sup> The legal basis for the reviewed items include the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*; Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794; California Education Code §§ 47605, 47607, 52052, 49010 *et seq.*; Title V, California Code of Regulations § 11967.5.1.



**I. The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.**

**A. Unsuccessful History of Involvement with Charter Schools**

1. Lead petitioner, Michael Scott, founded and served as the director of the California Hope Charter School, authorized by the Corona-Norco Unified School District Board. The school opened in September 2000 and closed during its first year of operation due to financial reasons associated with the inability to certify attendance that led to the state withholding funding. When asked to explain the situation during the clarification meeting, Mr. Scott initially stated he decided to close the school because there was a better option for students at River Springs Charter School. When pressed, he admitted that he had not closed the school voluntarily and that the problem with attendance reporting was due to the use of incorrect attendance forms and other issues, which could not be resolved.
2. The lead petitioner identified himself as the executive director and acting principal of the school in year one; however he has never been employed as a school principal. Additionally, Mr. Scott does not speak, read, write or comprehend Mandarin. As principal, Mr. Scott will be required to oversee and evaluate teachers, instructional strategies, academic content delivery and assist with the development of curriculum. It remains unclear how he will accomplish this in a school where 90% of instruction in year one is delivered in Mandarin. Additionally, the job description for the principal does not require any level of fluency in Mandarin, so the hiring of a principal in future years will not alleviate these concerns.
3. The contents of the charter petition and responses by Mr. Scott during the clarification meeting indicate a significant lack of experience and knowledge in programs the charter school proposes to offer, including special education, English language development, Career Technical Education (CTE), STEAM, Project GLAD® and Response to Intervention (RTI) practices. While Mr. Scott proposes to utilize consultants during the first year, the budget does not allocate monies for those contracts. Even if there are consultants hired, Mr. Scott will be the administrator on staff at the school on a daily basis. His lack of capacity calls into question his ability to deliver the programs described in the charter petition, meet the needs of all student populations, and monitor the different service providers he will need to contract with including, special education and finance vendors.

**B. Financial and Operational Plan**

The charter school has presented an unrealistic financial and operational plan for the proposed charter school.

1. The budget submitted contained incorrect assumptions, overstated revenues and understated expenditures. Additionally, the budget classified a \$400,000 loan as revenue instead of a balance sheet account. After correcting for these inaccuracies, OCDE staff projects the ending fund balance for 2020-21 to be, at a minimum, negative \$124,800.

2. The budget included \$400,000 in revenues and expenditures that OCDE staff assumes to be a Charter Asset Management (CAM) loan as that is the only documentation of outside funding included in the charter petition. During the clarification meeting, a representative from Charter School Management Corporation who created the budget stated that the \$400,000 was an anticipated loan from the Charter School Revolving Loan Fund (CSRLF) program. When OCDE staff pointed out the CSRLF has a maximum loan amount of \$250,000, the representative stated that the remaining \$150,000 was projected fundraising. No pledge letters are included in the charter submission to support that estimated funding. If the \$400,000 is in fact a CAM loan, the budget includes unrealistically low debt expenses. Loans from CAM are high interest. Realistic debt expenses for a CAM loan of that size would be over \$42,500 in year one (approximately 21.3% per annum) not the \$13,000 (approximately 6.5% per annum) estimated in the budget.
3. The budget does not reflect reasonable costs for the leasing of facilities to house the charter school. The budget assumes lease costs of \$1 per square foot per month. When asked how this amount was determined, Mr. Scott stated that he had applied for Proposition 39 facilities. When asked again how the lease cost in the budget was determined, Mr. Scott stated that it was based on a facility in Riverside County. Mr. Scott has not received an offer for Prop 39 facilities from Irvine Unified School District and \$1 per square foot is an unrealistic cost for private facilities in Orange County and the city of Irvine. A cursory real estate search revealed lease space that might be used to house a school in Irvine varies from \$2.10 to \$2.75 per square foot. If Mr. Scott does not acquire a facility for the amount projected, the budget would be further negatively impacted.
4. The budget overestimates special education revenue and does not include administrative fees that are required for membership in a Special Education Local Plan Area (SELPA). Mr. Scott has indicated that he will apply to either the El Dorado County Charter SELPA or the Los Angeles County Charter SELPA. The budget overstates special education revenue at \$550 per current year ADA. El Dorado SELPA advises using \$543 per ADA and Los Angeles County Charter SELPA advises using \$540 per ADA. Additionally, the budget provides only for speech services at \$20,000 in year one. It is highly unlikely that only speech services would be required for the approximately 10% of special education students with varying disabilities that the school may serve in the first year of operation. If adjustments to reflect accurate and realistic special education revenues and expenditures were made, the budget would be further negatively impacted.
5. The budget does not account for all of the positions listed in the charter petition, including an Executive Director, Principal, Office Manager, Director of Mandarin Curriculum and Instruction, and Operations Manager. During the clarification meeting, Mr. Scott expressed that he will have consultants working for special education and English language development, however money for consultants is not included in the budget.

**II. The petition does not contain reasonably comprehensive descriptions of the required elements under EC § 47605(b)**

**A. General Education**

1. The petition does not include a framework for instructional design aligned to the needs of the pupils the charter school is proposing to serve. The petition describes One-to-One Classroom™ with peer feedback as the main pedagogical approach. It is unclear how students who are not proficient in both Mandarin and English, particularly in the early grades, could be successful with this methodology given that transitional kindergarten, kindergarten and first grade students need extensive teacher-guided interactions in the beginning stages of their academic development.
2. The charter petition provides many different delivery models that are contradictory. The charter petition describes a one-to-one peer approach and positive peer pressure, but then includes a variety of computer-based programs that are designed for individualized interaction, such as Accelerated Reader, Accelerated Math, ST Math, etc. The charter petitioner references pull-out programs and after-school tutoring for students who are struggling. This is inconsistent with a full inclusion model for all learners or the one-to-one peer-learning model described in the charter petition.
3. The charter petition does not adequately describe how academic data will be used to guide instruction and provide individualized support to students. There is no indication of benchmark progress measures for grades TK-2. The charter petition references all students being proficient on various assessments, but does not indicate what constitutes proficiency. During the clarification meeting, the petitioner's responses were vague and lacked substance. When asked about formative assessments and the use of data, Mr. Scott stated that they "would not be using very much data during the early years" of the school.
4. The description of Response to Intervention (RTI) in the charter petition is not consistent with California's implementation of a Multi-Tiered System of Support framework. The charter petition, as well as responses during the clarification meeting by the lead petitioner, describe Tier 4 as a diagnosis for special education and Tier 5 as special education. There are no Tiers 4 or 5 in the RTI framework. RTI is not a diagnosis tool for special education and should never be used as a means of identifying students for special education.
5. The charter petition references after-school tutoring in multiple areas for students needing remediation and to support English learners (pages 76, 80, 96, 107, 157). However, the method for providing an after school program, including student supervision, is not clearly articulated in the charter. When questioned during the clarification meeting, Mr. Scott stated they might collaborate with an outside organization or parent volunteers. The budget submitted did not allocate for an after- school program. The plan to use parent volunteers to provide targeted support to struggling students, including English learners, is concerning.

6. The charter petition mentions Career Technical Education (CTE) and STEAM, but contains no details on implementation or how these would be incorporated into the school model. At the clarification meeting, Mr. Scott was not able to answer questions regarding STEAM and when asked how the CTE framework would be implemented, Mr. Scott stated that he had “not thought that far ahead” and did not know what was available in CTE for the middle school grades.

***B. Admission Requirements***

1. The charter indicates that student applicants for grades 2-8 will be scheduled for a Mandarin language assessment the Saturday after open enrollment ends. This is part of the application process, prior to the lottery and prior to students being accepted into the school, which is in violation of Education Code § 47605(2)(d)(A). During the clarification meeting, Mr. Scott stated that this text should not be in the charter petition and would need to be removed.
2. The charter does not specify the number of days that families will have to respond to an offer of admission, how many contacts will be made, how those contacts will occur, or the deadline to submit all enrollment information before forfeiture of the offer.

**III. The charter school presents an unsound educational program for the pupils to be enrolled in the charter school**

The charter petition does not describe a comprehensive educational program that serves the needs of all students and fails to provide researched-based instructional strategies that meet the unique needs of English learners, students with disabilities and high or low achieving students. Additionally, the lead petitioner lacks understanding of special education supports, interventions for all students and English language development (ELD), which could result in an educational program that does not benefit all students who attend the school.

***A. Special Education***

Mr. Scott lacks a thorough understanding of the Individuals with Disabilities Education Act (IDEA), Section 504, and the development of programs to support the learning needs of students with disabilities in an inclusive learning environment. Mr. Scott does not demonstrate understanding of tiered supports for all learners or how students qualify for special education. For example, in the clarification meeting, as well as at the January 8, 2020 public hearing, Mr. Scott referenced a diabetic student that would need an Individualized Educational Plan (IEP). In most situations, a diabetic student who does not have cognitive delays would qualify for Section 504, not an IEP. Comments made by Mr. Scott during the clarification meeting indicated that he assumed that there would not be any students enrolled with current IEPs on the first day of school because the school is starting with grades TK-1. Mr. Scott seemed unaware that students qualify for IEPs beginning at the age of three.

Mr. Scott is not an experienced school principal. While he stated that he would contract with a special education vendor, it is essential that he provide the day-to-day instructional leadership

to teachers as they implement the services identified in any given IEP. It is unclear how special education services will be monitored or who on staff will have a comprehensive understanding of the school's responsibilities under the legal mandates for special education students. There are no funds in the budget to contract with an onsite educational specialist.

Given the potential number of students with disabilities that may be included in the program, the petitioner is extremely unprepared to provide or manage the delivery of services and programming for students with disabilities or exceptional needs. This lack of capacity in a crucial area of public education is insufficient to provide day-to-day support to teachers, students and parents, for example to lead IEP meetings, enter into contracts and monitor outside vendors, and may result in an unrealistic over-reliance on the SELPA to provide support, which could cause the school to violate student rights.

***B. English Language Development***

Mr. Scott lacks a comprehensive understanding of the services required by law for English learners, how to provide designated time for English learners in public schools, and how to ensure that students are exposed to academic language in the school setting. An individual identified as a consultant for English learners support for the school, Cara Gallardo, attended the clarification meeting. However, Ms. Gallardo does not possess a California teaching credential and does not work in the K-12 school system. During the clarification meeting, Mr. Scott deferred all questions regarding ELD to Ms. Gallardo, who displayed limited knowledge of state standards for literacy and struggled to answer basic questions on ELD.

**CONCLUSION**

Based on a comprehensive review of the petition as submitted, information presented during the public hearing and an in-person clarification meeting, OCDE staff determined the petition does not meet the requirements of the Charter Schools Act and recommends that the OCBE deny the Irvine International Academy charter school petition. Should OCBE take action to deny the charter school petition, OCBE may adopt this Staff Report as its written findings in support of the denial.

OCBE has traditionally had three options for action regarding a charter petition on appeal:

- Option One: Approve the charter petition as written.
- Option Two: Approve the charter petition with conditions. This action would result in the charter petition being approved and require the execution of an Agreement to address the issues outlined in the Staff Report and address the operational relationship of the parties.
- Option Three: Deny the charter petition.

\* \* \*

**RESOLUTION AND WRITTEN FINDINGS  
OF THE ORANGE COUNTY BOARD OF EDUCATION  
TO APPROVE THE PETITION FOR A CHARTER SCHOOL  
FOR IRVINE INTERNATIONAL ACADEMY**

**WHEREAS**, the Legislature has enacted the Charter Schools Act of 1992, Education Code § 47600 et seq.;

**WHEREAS**, Education Code § 47605(j)(1) states that if the governing board of a school district denies a petition for a charter school, a petitioner may elect to submit the petition to the county board of education;

**WHEREAS**, the county board of education is required to review the petition on appeal pursuant to Education Code § 47605(b);

**WHEREAS**, Education Code § 47605(b) states that the county board of education is required to grant the charter if it is satisfied that granting the charter is consistent with sound educational practice;

**WHEREAS**, the county board of education cannot deny a petition for the establishment of a charter school unless it makes written factual findings specific to the particular petition setting forth specific facts stating the reasons for the denial of the charter petition;

**WHEREAS**, on December 11, 2019, the Orange County Board of Education (“Board”) received a petition from Western Mandarin Immersion Charter School, a nonprofit public benefit corporation, for the operation of Irvine International Academy (“Petition”) appealing the action on its Petition by the governing board of the Irvine Unified School District (“District”) on October 15, 2019;

**WHEREAS**, charter schools, as part of the California public school system and subject to the laws governing public agencies generally, are subject to the provisions of the Ralph M. Brown Act (Government Code § 54950 et seq.), the requirements of conflict of interest laws, including, but not limited to, Government Code § 1090 et seq., 1126, and 87100 et seq., and the California Public Records Act (Government Code § 6250 et seq.);

**WHEREAS**, charter schools are subject to the requirements of federal law, including, but not limited to, the Every Student Succeeds Act, 20 U.S.C. § 6301 et seq., the



Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.;

**WHEREAS**, the law requires that the county board obtain information regarding the operation and potential impacts of the proposed charter school;

**WHEREAS**, the Board has obtained, reviewed and analyzed all information received with respect to the petition, including information related to the operation and potential impacts of the proposed charter school;

**WHEREAS**, the Board held a public hearing on the Petition on January 8, 2020, and received public comment thereon;

**WHEREAS**, in reviewing charter school petitions the Board is guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system, and that establishment of charter schools should be encouraged; and

**WHEREAS**, the Board, at its regular meeting of February 5, 2020, reviewed and considered the Petition and all appropriate information received with respect to the Petition, including the Petition submitted to the District, the written findings of the Governing Board of the District, a rebuttal to the District's written findings submitted by the lead petitioner, and a Staff Report and Findings of Fact prepared by members of Orange County Department of Education ("OCDE") staff.

**NOW, THEREFORE, BE IT RESOLVED** that the Board hereby approves the Petition for a charter school by Western Mandarin Immersion Charter School for the operation of Irvine International Academy.

**BE IT FURTHER RESOLVED** that the Board approves the standard Agreement with the understanding that Irvine International Academy will enter into said Agreement that addresses the operational relationship between the School, the Board and OCDE no later than the Board's regularly scheduled meeting in May 2020. Should the Petitioner and Board fail to reach agreement by the regularly scheduled meeting in May 2020, the Board reserves the right to take further action, including but not limited to revoking its approval of the charter. The terms of this Resolution are severable.

STATE OF CALIFORNIA   )  
COUNTY OF ORANGE   )  
\_\_\_\_\_)

I, Darouny Sisavath, Clerk of the Orange County Board of Education, do hereby certify that the foregoing Resolution was duly passed, approved and adopted by the Orange County Board of Education at a regular meeting thereof held on the 5<sup>th</sup> day of February 2020, and that it was so adopted by the following vote:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

BY:

\_\_\_\_\_  
Clerk of the Orange County Board of Education

**RESOLUTION AND WRITTEN FINDINGS  
OF THE ORANGE COUNTY BOARD OF EDUCATION  
TO APPROVE WITH CONDITIONS  
THE PETITION FOR A CHARTER SCHOOL  
FOR IRVINE INTERNATIONAL ACADEMY**

**WHEREAS**, the Legislature has enacted the Charter Schools Act of 1992, Education Code § 47600 et seq.;

**WHEREAS**, Education Code § 47605(j)(1) states that if the governing board of a school district denies a petition for a charter school, a petitioner may elect to submit the petition to the county board of education;

**WHEREAS**, the county board of education is required to review the petition on appeal pursuant to Education Code § 47605(b);

**WHEREAS**, Education Code § 47605(b) states that the county board of education is required to grant the charter if it is satisfied that granting the charter is consistent with sound educational practice;

**WHEREAS**, the county board of education cannot deny a petition for the establishment of a charter school unless it makes written factual findings specific to the particular petition setting forth specific facts stating the reasons for the denial of the charter petition;

**WHEREAS**, on December 11, 2019, the Orange County Board of Education (“Board”) received a petition from Western Mandarin Immersion Charter School, a nonprofit public benefit corporation, for the operation of Irvine International Academy (“Petition”) appealing the action on its Petition by the governing board of the Irvine Unified School District (“District”) on October 15, 2019;

**WHEREAS**, charter schools, as part of the California public school system and subject to the laws governing public agencies generally, are subject to the provisions of the Ralph M. Brown Act (Government Code § 54950 et seq.), the requirements of conflict of interest laws, including, but not limited to, Government Code § 1090 et seq., 1126, and 87100 et seq., and the California Public Records Act (Government Code § 6250 et seq.);

**WHEREAS**, charter schools are subject to the requirements of federal law, including, but not limited to, the Every Student Succeeds Act, 20 U.S.C. § 6301 et seq., the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.;

**WHEREAS**, the law requires that the county board obtain information regarding the operation and potential impacts of the proposed charter school;

**WHEREAS**, the Board has obtained, reviewed and analyzed all information received with respect to the petition, including information related to the operation and potential impacts of the proposed charter school;

**WHEREAS**, the Board held a public hearing on the Petition on January 8, 2020, and received public comment thereon;

**WHEREAS**, in reviewing charter school petitions the Board is guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system, and that establishment of charter schools should be encouraged; and

**WHEREAS**, the Board, at its regular meeting of February 5, 2020, reviewed and considered the Petition and all appropriate information received with respect to the Petition, including the Petition submitted to the District, the written findings of the Governing Board of the District, a rebuttal to the District's written findings submitted by the lead petitioner, and a Staff Report and Findings of Fact prepared by members of Orange County Department of Education ("OCDE") staff.

**NOW, THEREFORE, BE IT RESOLVED** that the Board hereby adopts the findings and recommendations set forth in the attached Staff Report and Findings of Fact dated January 22, 2020, which is attached hereto and integrated herein by this reference.

**BE IT FURTHER RESOLVED** that the Board approves with conditions the Petition subject to conditions to address the findings as specified and adopted in the Staff Report and Findings of Fact. To satisfy the conditions, Petitioner and the Board must fully execute an Agreement that addresses all of the findings, as well as the operational relationship between the School, the Board, and OCDE, no later than the Board's regularly scheduled meeting in May 2020. Should the Petitioner and Board fail to reach agreement by the regularly scheduled meeting in May 2020, the Board reserves the right to take further action, including but not limited to revoking its approval of the charter. The terms of this Resolution are severable. Should it be determined that one or more of the findings is

invalid, the remaining findings and the board action shall remain in full force and effect. Each finding is, in and of itself, a sufficient basis for the conditional approval.

STATE OF CALIFORNIA   )  
COUNTY OF ORANGE    )  
\_\_\_\_\_)

I, Darouny Sisavath, Clerk of the Orange County Board of Education, do hereby certify that the foregoing Resolution was duly passed, approved and adopted by the Orange County Board of Education at a regular meeting thereof held on the 5<sup>th</sup> day of February 2020, and that it was so adopted by the following vote:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

BY:

\_\_\_\_\_  
Clerk of the Orange County Board of Education

**RESOLUTION AND WRITTEN FINDINGS  
OF THE ORANGE COUNTY BOARD OF EDUCATION  
TO DENY THE PETITION FOR A CHARTER SCHOOL  
FOR IRVINE INTERNATIONAL ACADEMY**

**WHEREAS**, the Legislature has enacted the Charter Schools Act of 1992, Education Code § 47600 et seq.;

**WHEREAS**, Education Code § 47605(j)(1) states that if the governing board of a school district denies a petition for charter school, a petitioner may elect to submit the petition to the county board of education;

**WHEREAS**, the county board of education is required to review the petition on appeal pursuant to Education Code § 47605(b);

**WHEREAS**, Education Code § 47605(b) states that the county board is required to grant the charter if it is satisfied that granting the charter is consistent with sound educational practice;

**WHEREAS**, the county board of education cannot deny a petition for the establishment of a charter school unless it makes written factual findings specific to the particular petition setting forth specific facts stating the reasons for the denial of the charter petition;

**WHEREAS**, on December 11, 2019, the Orange County Board of Education (“Board”) received a petition from Western Mandarin Immersion Charter School, a nonprofit public benefit corporation, for the operation of Irvine International Academy (“Petition”) appealing the action on its Petition by the governing Board of Irvine Unified School District (“District”) on October 15, 2019;

**WHEREAS**, charter schools, as part of the California public school system and subject to the laws governing public agencies generally, are subject to the provisions of the Ralph M. Brown Act (Government Code § 54950 et seq.), the requirements of conflict of interest laws, including, but not limited to, Government Code § 1090 et seq., 1126, and 87100 et seq., and the California Public Records Act (Government Code § 6250 et seq.);

**WHEREAS**, charter schools are subject to the requirements of federal law, including, but not limited to, the Every Student Succeeds Act, 20 U.S.C. § 6301 et seq., the



Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.;

**WHEREAS**, the law requires that the county board obtain information regarding the operation and potential impacts of the proposed charter school;

**WHEREAS**, the Board has obtained, reviewed and analyzed all information received with respect to the petition, including information related to the operation and potential impacts of the proposed charter school;

**WHEREAS**, the Board held a public hearing on the Petition on January 8, 2020, and received public comment thereon;

**WHEREAS**, in reviewing charter school petitions the Board is guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system, and that establishment of charter schools should be encouraged; and

**WHEREAS**, the Board, at its regular meeting of February 5, 2020, reviewed and considered the Petition and all appropriate information received with respect to the Petition, including the petition submitted to the District, the written findings of the Governing Board of the District, a rebuttal to the District's written findings submitted by the lead petitioner, and a Staff Report and Findings of Fact prepared by members of Orange County Department of Education ("OCDE") staff; and

**WHEREAS**, the Board specifically notes that this Resolution does not include findings relative to every defect in the Petition, but is limited to the most significant issues, which as set forth in the Staff Report and Findings of Fact are legally sufficient to support the Board's denial of the charter petition.

**NOW, THEREFORE, BE IT RESOLVED** that the Board hereby adopts the findings set forth in the attached Staff Report and Findings of Fact dated February 22, 2020, which is attached hereto and integrated herein by this reference, and the Board further finds as follows:

- (1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school;

- (2) The petitioners are demonstrably unlikely to implement successfully the program presented in the petition; and
- (3) The petition does not contain reasonably comprehensive descriptions of the required elements set forth in Education Code § 47605, subdivisions (b)(5)(A-P).

**BE IT FURTHER RESOLVED** that the Board denies the Petition based on the findings herein adopted. The terms of this Resolution are severable. Should it be determined that one or more of the findings is invalid, the remaining findings and the board action shall remain in full force and effect. Each finding is, in and of itself, a sufficient basis for the denial.

STATE OF CALIFORNIA    )  
COUNTY OF ORANGE     )  
\_\_\_\_\_                  )

I, Darouny Sisavath, Clerk of the Orange County Board of Education, do hereby certify that the foregoing Resolution was duly passed, approved and adopted by the Orange County Board of Education at a regular meeting thereof held on the 5<sup>th</sup> day of February 2020, and that it was so adopted by the following vote:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

BY:

\_\_\_\_\_  
Clerk of the Orange County Board of Education