

Board Update on General Counsel and Budget Litigation
May 13, 2020

Due to the public health crisis and related state and county stay-at-home orders trial in the General Counsel litigation and pre-trial proceedings in the Budget litigation have been postponed. These matters will be rescheduled once the Orange County Superior Court reopens for normal (or closer to normal) operations. Currently, the court's closure order is scheduled to run through May 22, 2020.

As noted in earlier updates, and in the Board's filings with the court, these cases involve important questions of the Board's and the Superintendent's respective legal authority on such critical issues as the retention of our shared legal officer and the approval and adoption of our annual budget. These issues strongly impact Department policy, management, and accountability to the public. In regard to both issues, the Superintendent has adamantly asserted that he has sole power and ultimate authority to appoint the shared legal officer, and that the Board is merely limited to providing "input" into the Superintendent's budget but may not make any changes to it.

The Board disagrees. The law clearly requires both agencies to co-appoint their shared legal officer. The law is equally clear that the Board of Education has the sole authority to approve and adopt a budget, and that the Superintendent is obligated to submit the Board's approved budget, which the Superintendent refused to do with the Board-approved Annual Budget for 2019-2020 fiscal year.

California provides a rational framework of co-governance for educational policy and fiscal management within Orange County, with separate and defined powers between the Board and the Superintendent that Dr. Mijares is not respecting. Unchecked and unauthorized power in the hands of one governmental official is, in the best case, a recipe for waste and a lack of transparency and accountability. The Superintendent's resistance to the Board's cutting of \$170,000 in travel and lobbying expenditures from this year's budget on the basis that the Board does not have the power to do so, and his claim that the Board's reduction of such surplus spending that doesn't benefit students would "set an alarming precedent," is emblematic of this.

The Board believes that the voters of Orange County are entitled to have their elected officials exercise the powers and authority that they have been given by law, and that preservation of the balance and separation of powers is necessary for the voters' interests and priorities to be served. The Board's informal efforts to reach a compromise with Dr. Mijares on a reasonable working structure for shared governance and authority within a collaborative framework and the contours of California law were unsuccessful. At bottom, the Superintendent has refused to relinquish any of his perceived power and authority or recognize the Board's authority in these critical governance areas, making these suits necessary.