

Board Update on General Counsel and Budget Litigation July 1, 2020

The Orange County Superior Court's reopening is in process, and trial dates are scheduled in the General Counsel litigation for July 27, 2020, and in the Budget litigation for June 7, 2021.

The Board has already summarized the importance, purpose, and necessity of these cases in its prior update from May 13, 2020, which can be accessed on the Board's web page: (https://ocde.us/Board/Documents/Board%20Policies/Board%20Update%20on%20General%20Counsel%20and%20Budget%20Litigation_May%2013%2c%202020.pdf). The Board looks forward to having its legal claims heard and for the courts to rule on these matters of critical significance regarding the scope and limits of the Superintendent's and the Board's respective legal governmental authority over the county's educational policy and fiscal management.

We won't repeat from our prior summary here, but we do want to respond to a few of the misstatements and omissions that the Superintendent has made in the posting on his web page under the title "OCDE Budget Developments" (<https://ocde.us/Superintendent/Pages/OCDE-Budget-Development.aspx>).

- First, the Superintendent mistakenly claims that the Board submitted an "unauthorized budget" to the state Superintendent. This is incorrect. The budget that the Board submitted was duly approved, adopted, and authorized by the Board, not just once but twice, on June 26 and August 1, 2019. The Board is the only governmental entity in the county empowered to approve and authorize the budget. This power was conferred to it by the Orange County Board of Supervisors by resolution in 1977, lawfully delegating to the Board of Education the duties and functions allowed under California Education Code section 1080, including fiscal oversight of the county superintendent pursuant to California Education Code section 1042.
- The Superintendent next offers assurance that the impasse over budget authority and the issues in the litigation "will not affect OCDE's operational stability, our support for local districts, or services for students, or compensation for our valued employees." This is certainly true, but the Superintendent omits to mention that the Board never proposed anything that would impair or affect any of these things. All the Board did with the 2019-2020 Annual Budget was identify proposed spending on travel, conferences, and lobbying that it judged to be unnecessary and wasteful, and it adopted a budget with a lower level of spending approved for those items.
- The Superintendent next characterizes his proposed budget for 2019-2020 year as "balanced and fiscally sound," but this ignores the fact that the Board's approved and adopted budget was *also* balanced and fiscally sound (indeed, even more so, since it spent less money on unnecessary activities), and it also ignores the fact that the Board's concern with the Superintendent's proposed budget was not its "fiscal soundness," but rather that it contained unnecessary spending that could be reduced without any impairment to educational programs or critical operations.
- The Superintendent asserts that county boards of education are "directed" by law to approve or disapprove budgets developed by the Superintendent, and that they "may not

unilaterally amend or modify the county superintendent's budget." This is also not correct. As noted, the Board of Supervisors delegated fiscal management authority to the Board of Education exclusively, and under California Education Code sections 1042, 1080, and 1622, the Board is solely authorized to approve and adopt a budget. California law does not prescribe or convey any such authority on the Superintendent. This governmental structure in the law for county educational governance is not dissimilar from the executive and legislative branch structure and separation of powers in our federal and state systems. The Superintendent's responsibility and authority under the law is to "superintend," that is to manage the day-to-day operations of the county's educational governmental functions and to execute the policy and fiscal determinations of the Board in compliance with applicable law. The Board's legal authority and responsibility, among other things, is to set fiscal policy through the approval and adoption of the budget for both the Board and the Superintendent, and the law is clear that the setting of fiscal policy is the exclusive purview of the Board. The law provides no veto right or signature requirement of the Superintendent for the Board to adopt and submit an annual budget.

- The Superintendent accuses the Board of "jumping the gun" in filing the suit in November 2019, but the Superintendent had already affirmatively declared his position to the Board that it did not have the legal authority to adopt a budget different from what he had proposed and would agree to. The Board strongly disagreed with the Superintendent on this issue and it only proceeded with the suit after unsuccessfully attempting to reach an informal compromise and agreement with the Superintendent that would have avoided the need for judicial resolution of the disagreement.
- The Superintendent also notes that the budget litigation is the second suit the Board has filed against the Superintendent "in less than 18 months." This is accurate, but this is because the Superintendent *twice* in 18 months denied the Board its legal rights. Rather than engage in a collaborative and shared form of co-governance with the Board (by co-appointing the General Counsel together and agreeing with the Board on a compromise level of cuts to unnecessary spending in the budget so that the Board could approve the Superintendent's proposed budget), the Superintendent decided to maintain a tight and autocratic grip on power, even as to legal powers that rightly belong to the Board. That is what has made the two suits necessary.
- With respect to the General Counsel appointment itself, the Superintendent misleadingly claims that there was "a previously agreed upon administrative process for hiring OCDE's in-house general counsel." The Board never agreed to any process in which it would not co-appoint the shared General Counsel pursuant to formal Board action, as required by law. Indeed, Board members understood from Dr. Mijares' discussion with the Board in April 2018 and communication with staff thereafter that consideration of final candidates and a decision on an appointment of the General Counsel would be reached on a unanimous basis between both the Board and the Superintendent. But in the end, after involving just one Board member (Jack Bedell) in a final round of interviews internally at the Superintendent's office, the Superintendent unilaterally announced the appointment of a new General Counsel without any consideration or co-approval from the Board itself.
- On the budget process, while incorrectly asserting on the one hand that he has to be the one to sign and submit the budget, the Superintendent on the other hand claims that the

Board “missed its deadline” to submit the budget. This is untrue as well as inconsistent. The Superintendent was under a legal obligation to submit the final approved budget to the state Superintendent by October 1. After the Superintendent refused to submit the Board’s duly authorized and adopted budget, in violation of California Education Code section 14050 and Cal. Code of Regulations section 17340, the Board submitted it on August 15, 2019, well before October 1.

- The Superintendent also misleadingly raises red herrings on the budget with suggestions that Board members might be “driven by political or ideological agendas [to] defy state laws” or to “block a county office’s ability to train educators on state standards, ensure the quality of charter schools, or support a diverse student population.” The Superintendent’s reliance on such tropes and fear mongering reveals the paucity of his position. The Board’s decision to reduce unnecessary spending on travel, out-of-town conferences, and lobbyists in Sacramento has nothing to do with those issues. It does, however, have to do with prudent fiscal management, which is something that voters expect their government to exercise, and which experience tells us does not get performed as effectively when one agency (in this case – one person) wields too much power without oversight and proper checks and balances. The Board never has, and never would, propose to defy state law or block efforts to train educators to state standards, ensure quality charter schools, and support a diverse student population. The Superintendent knows this, and he knows that this isn’t about any of those things, or politics or ideology either. It is about the Superintendent’s desire to hold onto to unfettered and unauthorized power over the county’s educational budget and fiscal policy.
- Likewise, the Superintendent’s dismissal of the Board’s spending reduction in the 2019-2020 Annual Budget as “penny-wise and pound-foolish” is revealing. Notably missing is any attempt to explain why this \$170,000 of spending on hotels, rental cars, conferences, and Sacramento lobbyists is necessary and important and serves the students and residents of Orange County. In the Board’s view, the reduction of unnecessary and wasteful spending, whether it’s .07% of the budget or a different amount, is never foolish.
- Finally, also on the budget, the Superintendent says that his way of doing the budget is “how the process has always worked at OCDE.” Whether or not this is accurate, this old refrain is as tired as it is irrelevant. Doing something incorrectly in the past does not preclude fixing it in the future. This way of thinking stands in the way of improvement, change, and innovation. And it is frequently deployed by those in power to resist change and any reduction in their power. It is therefore perhaps no surprise to see it being deployed by the Superintendent here.