

Orange County Board of Education



August 5, 2020

Statement of the Board of Education

On July 28, 2020, the Board voted 4-0 to bring a legal challenge to the recent actions of the Governor and the California Public Health Officer (PHO) to keep schools closed to in-person learning this coming school year. The importance of this issue, and the severe harm that our children and community face from continued school closures, could not be any clearer. Broad-based distance-only learning is far inferior to in-person instruction for children, to say nothing of the negative social development, nutritional, and potential child abuse impacts of keeping students isolated at home and away from school. Keeping classrooms closed will hurt all students, and critically, it will disproportionately hurt less affluent, disadvantaged, special needs, and minority students more than their privileged peers.

Although the Board's July 28 statement and July 29 press release clearly explained the Board's reasons and basis for seeking to set aside the Governor's and PHO's unconstitutional actions, the Board is making this further statement to respond to some of the public comments and misstatements made by the Superintendent and others following the Board's decision.

The Superintendent says he is "disappointed" with the Board's decision to mount this legal challenge, and he asserts that the Board "has no qualms" about diverting time and energy to it. To be sure, some time and energy will be devoted by the Board to the legal action (no time will be required from staff). But make no mistake, the potential harm to our children's constitutional right to an equal and adequate education is exactly the type of public policy issue the Board has qualms about. Protecting our communities, defending historically disadvantaged families and educational rights, and standing against unconstitutional government orders that keep our school classrooms closed and do irreparable harm to our children is central to the Board's role and well worth the time and energy required. It is also something, in our view, that the residents of Orange County expect their elected representatives to do on their behalf.

The Superintendent also accuses the "board majority" (whatever that may mean) of taking this action to "satisfy their own ideological interests." The Superintendent does not describe what these "ideological interests" supposedly are. For the Board, protecting our students and our community from the severe and irreversible harms of keeping classrooms closed to in-person learning – *harms that do not appear to be justified by the risks presented by the coronavirus* – is the only "ideology" (or perhaps more accurately stated, "the only proper leadership and good governance") at work here.

The Superintendent also suggests that the Board is unconcerned about student and public safety by releasing a white paper with guidelines on reopening schools that advances CDC recommendations, public health practices, and the position of the American Academy of Pediatrics. The Superintendent conveniently fails to mention that the white paper and guidelines rely upon the opinions of medical

Orange County Board of Education



experts and relevant medical and scientific evidence in recommending that schools reopen for in-person learning with appropriate and warranted safety measures to manage the risk of the virus (which, based on current evidence, poses less mortality risk than being struck by lightning for most children and very low transmission risk for adults as result of being around children). The Board's perspective, and the white paper's as well, lines up with the substantial number of studies and growing body of evidence from other countries that have successfully reopened schools (and in some instances never closed them) to in-person learning. Indeed, they also line up with recommendations of the federal Center for Disease Control (CDC) and the California Department of Education (CDE), both of which recognize the importance of reopening schools for in-person learning, and the substantial and inequitable harms that will befall our children if they do not.

Contrary to the Superintendent's suggestion, it is important to note that the Board has never taken the position that families should be mandated to send their kids to the classroom during the pandemic. The action being taken by the Board is to challenge the Governor's and the PHO's orders that limit choice by denying classroom instruction to parents who want it, and that unconstitutionally deny thousands of California's children their right to an equal education. The Board supports providing parents a choice to utilize a distance learning option if that is best for them and their child in their specific circumstances. The Board also supports appropriate safety measures in schools as part of the reopening, so long as those measures are medically and scientifically sound, and that the risks of such measures are weighed against the risks they are intended to mitigate (and the amount of mitigation that they will, in fact, achieve). It is this thoughtful balancing of all the risks and harms that is notably absent from policy making and leadership on the school reopening issue, and the Governor's and PHO's actions unfortunately are no exception.

Finally, the Superintendent accuses the Board of "diverting...financial resources" to pursue this constitutional challenge. This is misleading, at best. As the Board made clear in its statement on July 28, the Board is being represented in this effort by its counsel, Tyler & Bursch, pro bono. Thus, the Board will not incur legal fees in pursuing this legal challenge, which involves a matter of utmost importance and concern to Orange County's students and their families.

This accusation of financial resource diversion is highly ironic (to put it charitably) coming from the Superintendent, who resisted the Board's efforts last year to reduce unnecessary spending in the 2019-2020 annual budget on Sacramento lobbyists and out-of-town travel to conferences. And it is even more ironic in light of the Superintendent's unilateral decision over the last four years to litigate against the Orange County Employees Retirement System (OCERS) over his obligation to fund retirement benefits for persons who were employed in his office. Dr. Mijares refused to pay, forcing OCERS to file suit, and then he actively litigated a losing cause all the way to the court of appeal. (*Mijares v. OCERS*, 32 Cal.App.5th 316; Cal. Court of Appeals Case No. G055439; Orange County Superior Court Case No. 30-2019-00836897.)

Orange County Board of Education



Dr. Mijares is now engaged in litigation over the litigation. He lost his misguided legal case against OCERS, spending over 1.2 million dollars of taxpayer dollars in the process, and now he is refusing to pay or reach a reasonable compromise of the legal fees he forced OCERS to incur, which has resulted in a further lawsuit (Orange County Superior Court Case No. 19STCP04023) that Dr. Mijares is currently spending additional monies to litigate, all without Board approval or endorsement.