

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Settlement Agreement") is entered into by and among the Orange County Board of Education (the "Board") and Orange County Superintendent of Schools Al Mijares (the "Superintendent") (collectively, the "Parties").

RECITALS

WHEREAS, on October 10, 2018, the Board filed a Complaint for Declaratory Relief and Injunctive Relief ("Complaint") against the Superintendent pertaining to a dispute under California Education Code Section 35041.5 ("Section 35041.5") between the Board and the Superintendent regarding the appointment by the Superintendent of Jeffrey Riel ("Riel") as General Counsel to the Board without action by the full Board. The case, *Orange County Board of Education v. Al Mijares*, was designated Case No. 30-2018-01023385-CU-MC-CJC in the Superior Court for the State of California for the County of Orange (the "Action").

WHEREAS, on November 19, 2018, the Superintendent filed a Cross-Complaint for Declaratory Relief against the Board in the Action, and on January 27, 2020, the Superintendent requested dismissal of the Cross-Complaint without prejudice, and the Cross-Complaint was dismissed.

WHEREAS, on October 25, 2019, the Superintendent filed a Notice of Appeal of the Court's July 25, 2019, order granting the Board's Motion to Preliminary Injunction and enjoining the Superintendent from refusing to remit payment to the Board's attorney Gregory Rolen ("Rolen") and Haight Brown & Bonesteel, LLP ("HBB") for legal services performed to the Board. The appeal was designated as Case No. G058491 in the Court of Appeal, State of California, Fourth Appellate District, Division Three (the "Appeal.") The Complaint, the since-dismissed Cross-Complaint, and the Appeal hereinafter are referred to as the "Litigation."

WHEREAS, on October 13, 2020, the Parties commenced a bench trial in the Litigation before the Hon. James Crandall on the Complaint's second and fourth causes of action.

NOW, THEREFORE, the Parties now desire to settle the Litigation on the following terms and conditions, to which they both agree and memorialize by and through this Settlement Agreement, the resolution of the Board in closed session at its special meeting on February 22, 2021, and their signatures below.

1. **Settlement Covenants.**

a. The Superintendent shall pay Rolen's and HHB's invoices for legal services rendered to the Board that are due and owing, with interest at 3% per annum since each invoice became due, which includes all Board-approved invoices for services rendered through the present. Payment will be made by February 28, 2021.

b. The Superintendent will pay attorney Maggie Chidester for her invoices for legal services rendered to the Board that are due and owing, with interest at 3% per annum since any such invoice became due, which includes all Board-approved invoices for services rendered through the present. Payment will be made by February 28, 2021.

c. The Superintendent agrees that the Board may continue to use an attorney of its choice as long as it believes, in its sole discretion, that it has a conflict of interest with Riel or any of the attorneys employed by the Superintendent within the Orange County Department of Education ("OCDE") Legal Services Division. Any such counsel used by the Board will be paid by the Superintendent in good faith in accordance with the normal vendor payment practices of OCDE. A determination of its belief by valid Board action as to a conflict will be ongoing, will continue to be effective, and will not require reaffirmation by subsequent Board action, and the Board may determine a different belief at any time in its discretion by subsequent valid Board action. The parties understand and acknowledge that the Board has determined that it has a conflict with Riel and the other attorneys employed by the Superintendent, and this determination shall continue and be ongoing until and unless the Board subsequently determines otherwise.

d. The Board stipulates that it is not seeking and will not seek in the future to terminate the employment of Riel for the non-Board work that Riel does as the General Counsel for the Superintendent and the OCDE. Moreover, the Board agrees that Riel may continue to advise the Superintendent, the OCDE staff, the Orange County local school districts and the Orange County community college districts as Riel currently does.

e. The Superintendent agrees to withdraw Motion to Reopen Case in Chief in the Litigation.

f. The Parties agree that the Court's December 30, 2019, rulings on the parties' summary judgment and/or summary adjudication motions are vacated and are of no force and effect, and the parties will promptly submit a stipulation and proposed order (the "Stipulation and Order") to the Court (1) vacating such rulings, (2) dismissing this action without prejudice and (3) retaining jurisdiction for the Court to enforce the settlement pursuant to section 664.6 of the Code of Civil Procedure.

g. The parties mutually confirm that, in light of the settlement with no final court decision entered in the Litigation, neither party is the prevailing party in the Litigation.

h. In exchange for the promises, releases, representations, and covenants herein, the Parties agree that the entire Litigation will be dismissed without prejudice pursuant to the terms set forth herein.

2. Dismissal of Litigation and the Appeal; Retention of Jurisdiction.

a. Within five (5) court days of the Court's acknowledgement of the Parties' settlement as stated in the Settlement Agreement, and upon entry of the above-referenced Stipulation and Order, the Superintendent shall request dismissal of his Appeal, without prejudice.

b. Notwithstanding the dismissals, the Parties agree that the Orange County Superior Court shall retain jurisdiction under California Code of Civil Procedure section 664.6 to enforce the terms of this Settlement Agreement.

3. Governing Law. This Settlement Agreement is made and entered into in the State of California and shall, in all respects, be interpreted, enforced and governed by and under the laws of the State of California, including all matters of construction, validity, and performance, without regard to choice of law rules.

4. Authority/Representations. Each of the Parties to this Settlement Agreement represents that no promise or inducement has been made or offered by any of the Parties, except as set forth herein, and that this Settlement Agreement is not executed in reliance upon any statement or representation of any of the Parties or their representatives, not otherwise reflected herein. The Parties will cooperate with each other and execute further documents in good faith as may be necessary to effectuate the terms of this Settlement Agreement. The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this Agreement and to engage in the actions described herein.

5. Counterparts. This Settlement Agreement may be executed in one or more counterparts, with the same force and effect as if executed in one complete document.

6. Facsimile Signature Deemed Original. This Settlement Agreement may be signed and delivered by facsimile transmission, and such facsimile documents shall be deemed originals and binding upon the signatories upon receipt by the Party to whom the facsimile transmission is sent. The hard copies of such document bearing the original signatures of such signatories shall be sent via first class mail on the same day as the facsimile transmission to the other Party.

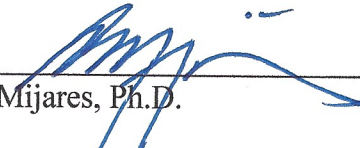
7. Amendments and/or Modifications. This Settlement Agreement may be amended or modified only by a writing signed by all Parties to this Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto have entered into and executed this Settlement Agreement as of the date set forth below.

Dated: February __, 2021

ORANGE COUNTY SUPERINTENDENT
OF SCHOOLS

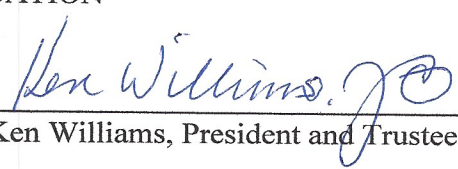
By


Al Mijares, Ph.D.

Dated: February 12, 2021

ORANGE COUNTY BOARD OF
EDUCATION

By


Ken Williams, President and Trustee

Dated: February 22, 2021

ORANGE COUNTY BOARD OF
EDUCATION

By


Mari Barke, Vice President and Trustee

APPROVED AS TO FORM ONLY:

Dated: February 22, 2021

RUTAN & TUCKER, LLP

By: 

George W. ("Bill") Shaeffer, Jr.
Attorneys for Al Mijares, Ph.D.,
Orange County Superintendent of
Schools

Dated: February 22, 2021

EPSTEIN BECKER GREEN, PC

By: 

Jonathan M. Brenner
Attorneys for Orange County Board of
Education