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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

CECILIA OCHOA; MAGDALENA PAREDES; MARLENE GAYTAN; MAYRA CERVANTES; GERONIMO GAYTAN; CALIFORNIA CENTER FOR PARENT EMPOWERMENT,

Petitioners,

v.

ANAHEIM CITY SCHOOL DISTRICT; ANAHEIM CITY SCHOOL DISTRICT BOARD OF EDUCATION,

Respondents.

Case No. 30-2015-00782615-CU-WM-CJC

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR ALTERNATIVE WRIT OF MANDATE

Judge Deborah Servino

C-22

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I. INTRODUCTION

This petition for a writ of mandate is brought by parents of the failed Palm Lane Elementary School against the Anaheim City School District. The school has been classified as a failing school for over a decade. Half of the students who graduate from Palm Lane are not proficient in English-language arts or math. Sadly, the vast majority of students at Palm Lane enter middle school and high school far behind other schools in the District. The California Supreme Court has held that a decent education is a fundamental civil right for children in California. And federal courts have also recognized that parents' First Amendment right to petition their government on behalf of their children is such a fundamental constitutional right that a rejection or refusal to implement such a petition cannot stand unless it passes "exacting scrutiny."

On January 14, 2015, the parents of 66% of Palm Lane students petitioned the District to transform the failed school into an independent charter school. The parents' petition ("Petition") was explicitly authorized by the Parent Empowerment Act—commonly referred to as the "Parent Trigger" law—which allows parents to file such a petition for a failed school, and ***requires*** a school district to implement any petition signed by parents representing 50% of the students at Palm Lane. Here, parents of 488 Palm Lane students signed the Petition, and the District had no discretion to reject it so long as there were signatures for 367 students.

Rather than accept the Petition, however, the District improperly returned the Petition on February 19, 2015 and has unfortunately engaged in a systematic effort to invalidate it. *First*, despite the clear legal mandate that the District accept every parent's petition absent proof that it was invalid, and courts' repeated instructions that any attempt to reject a citizen's First Amendment protected right to petition must withstand the most "exacting scrutiny," the District appears to have improperly rejected signatures that would have put the Petition over the 50% threshold, including valid petitions of parents whom the District claims it could not reach. Such actions constitute an abuse of discretion and a violation of the District's duties under the law.

Second, despite the legal mandate that the District provide parents detailed information supporting its decision to return the Petition, the District has instead purposefully withheld those details, either in an attempt to delay the determination that the Parent Trigger law's legal

requirements have already been met, or to deprive the parents of their right to correct and resubmit the Petition so as to meet them. In total, the District has rejected petitions associated with 133 students as "invalid" or "unverifiable," leaving parents a mere 12 students short of the 367 the District claimed would constitute 50% of the students at Palm Lane on the submission date. The District substantiated its decision to reject these signatures with only vague descriptions of categories of petitions it deemed invalid, leaving parents at a loss as to how to remedy any alleged defects. This is in direct contravention of the District's statutory duty, and has left parents with no adequate remedy but to seek a writ of mandate from the court to compel the District's compliance.

Third, knowing that the parents have already provided—or will provide—sufficient signatures to reach the 50% threshold, the District has rejected the Petition for additional reasons that are simply untrue or which constitute technicalities that simply cannot support outright denial of the Petition. Indeed, as discuss *infra*, the District's claim that Palm Lane is not a subject school—the premise of its declaratory relief action—is belied by guidance from state authorities and the District's *own admission* to the contrary.

Because the District has refused to provide adequate details supporting its return of the Petition, or has otherwise stated legally-insufficient reasons for doing so, Petitioners request a writ of mandate from the Court directing the District to accept the Petition or show cause before this Court as to why it need not do so, including by identifying every petition that the District invalidated along with a disclosure of all of the legally-sufficient bases the District contends support its invalidation.

II. BACKGROUND FACTS

Petitioners hereby incorporate by reference the factual allegations as laid out in the concurrently filed Verified Petition for Writ of Mandate ("Writ Petition"), ¶¶ 1-47.

III. ARGUMENT

A. Legal Standard.

The rights at stake here are vitally important for Petitioners, their children, and for the Anaheim community. Education Code, § 53300 *et seq*. is commonly known as the "Parent Trigger" law. "This statute empowers parents of children who attend the persistently lowest achieving schools to take corrective action." Holscher Decl. Ex. 7 (*Adelanto School District*, San Bernardino

County Superior Court, (Case No. CIV VIS 1201650)) at 2. Under the Parent Trigger law, parents of students attending under-performing schools may sign a petition seeking to require the school district to implement an intervention plan at the school. *Id.* at 2.

A writ of mandate is necessary to vindicate Petitioners' First Amendment right to petition the District to reform Palm Lane, and to prevent the District from further depriving their children of their fundamental right to an adequate education. *See John Doe No. 1 v. Reed*, 561 U.S. 186, , 195 (2010) (the right to petition is "core political speech" protected under the First Amendment); *Kirchmann v. Lake Elsinore Unified Sch. Dist*., 57 Cal. App. 4th 595, 614-15 (1997) (issuing peremptory writ requiring school district to set aside decision in violation of First Amendment); *see also* Holscher Decl. Ex. 6 (the First Amendment protects the right to petition in the Parent Trigger context). Petitioners may enforce their rights under § 1085 of the Code of Civil Procedure because they meet each of the requirements for the issuance of a writ under that provision. ***First***, the District has a clear, present, and ministerial duty to act—namely, to accept the Parent Trigger Petitions and issue a final disposition permitting Petitioners to begin the process of soliciting and selecting from charter school proposals ***or*** to comply with its obligation to provide Petitioners with the information necessary to cure and resubmit the Petition. *See* Holscher Decl. Ex. 7. Section 53300 states that when a combination of parents or legal guardians representing at least half of the pupils attending the school sign a petition requesting the local educational agency to implement corrective action, "the local educational agency ***shall*** implement the corrective action requested by the parents or legal guardians." *Id.* California Superior Court Judge Steve Malone has described the duty of a local educational agency in response to a Parent Trigger petition this way:

> Since the act states that a local agency "shall" implement the requested corrective action, ***a local school district has a mandatory duty to implement the corrective action sought*** when at least half the parents or legal guardians of pupils at a school sign a petition under the Parent Trigger Law. ***The District is not allowed to disregard this mandatory duty because in their judgment, converting the school into a charter school is unwise, inappropriate, or unpopular with the District employees or classroom teachers."***

Id. at 6 (emphases added). The local educational agency is afforded an opportunity to make "a good faith effort" to verify that the signatures submitted "can be counted consistent with [the] regulations." *Id.* at 7; Cal. Code Regs. tit. 5, §§ 4802.1(b) and (f). If, however, the local educational

agency finds that sufficient signatures cannot be verified, it then has a mandatory duty to immediately notify lead petitioners and provide them with the names of those parents and legal guardians it cannot verify. *Id.* at § 4802.1(h). It must also notify the lead petitioners in writing of any "discrepancy," "problem," or "error" in the petition and request their assistance to resolve them prior to making a final determination on the Petition. *Id.* at § 4802.1(i).

Second, Petitioners have a clear, present, and beneficial right to the performance of these duties because it directly affects their children's education. *Doe v. Albany Unified Sch. Dist.*, 190 Cal. App. 4th 668, 682 (2010) (parents have a beneficial right in enforcing laws pertaining to their children's education). ***Third***, Petitioners lack an adequate remedy at law to prevent or redress the harm that will otherwise result from the District's improper rejection of the Petitions. *San Joaquin Cnty. Emps. Assn. v. City of Stockton*, 161 Cal. App. 3d 813, 820 (1984) (affirming issuance of a writ of mandate where unlawful government action affected the bargaining process). Indeed, absent a writ of mandate commanding the District to immediately accept the Petition or show cause why it need not do so, Palm Lane students will languish for another year in a failing school.

B. The Parents Have a First Amendment Right to Petition the District to Secure Their Children's Fundamental Right to an Adequate Education.

Over forty years ago, the California Supreme Court recognized that a child's access to an adequate education—regardless of race, ethnicity, or wealth—is a fundamental right of the highest order. *Serrano v. Priest*, 5 Cal. 3d 584, 608-09 (1971) ("We are convinced that the distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a 'fundamental interest.'"). The Supreme Court recognized that "education is a major determinant of an individual's chances for economic and social success in our competitive society." *Id.* at 605. In short, education "is the lifeline of both the individual and society." *Id.* For students at Palm Lane especially, who face economic hardship and language barriers (*see* Ochoa Decl. ¶¶ 15-16), a quality education is imperative to "preserv[e] [their] opportunity to compete successfully in the economic marketplace, despite a disadvantaged background." *See Serrano*, 5 Cal. 3d 584, 609 (1971). But a quality education is precisely what the District has denied the students of Palm Lane. ***Sixty-two percent*** of the students at Palm Lane are not proficient in English-language arts, and ***forty-seven***

percent are not proficient in math—though the school focuses almost exclusively on those two subjects. Holscher Decl. Ex. 17; *see also* Writ Petition ¶¶ 16, 31.

Resolved to secure a better education for their children, the parents of Palm Lane students united and used the Parent Trigger law to bring meaningful reform for the school. The parents supported the Petition by overwhelming margins. Indeed, the January 14 Petition was signed by parents representing nearly 70% of Palm Lane students. The Petitions constitute the core political speech of Petitioners and are thus entitled to the highest level of constitutional protection. *See Reed*, 561 U.S. at 195 (First Amendment safeguards right to petition as "core political speech"); *see also Meyer v. Grant*, 486 U.S. 414, 425 (1998); Holscher Decl. Ex. 6 (recognizing that the right to petition in the Parent Trigger context is protected by the First Amendment). As such, any District policy which places a burden on this right is subject to "*exacting scrutiny*." *See Reed*, 561 U.S. at 196 (emphasis added); *Meyer*, 486 U.S. at 420. The District's refusal to accept the Petition cannot withstand this constitutional standard.

C. The District Violated Its Ministerial Duty Under the Parent Trigger Law and Infringed on the Fundamental Rights of the Parents and the Students.

The District violated a ministerial duty by either (1) returning the Petition, despite its validity under the Parent Trigger law or (2) refusing to provide Lead Petitioners with sufficient details supporting its determination that the Petition was properly returned. A ministerial duty is "an act that a public officer is obligated to perform in a prescribed manner required by law when a given state of facts exists." *Alliance for a Better Downtown Millbrae v. Wade*, 108 Cal. App. 4th 123,129 (2003). Here, the Parent Trigger law imposed such a duty on the District because, upon receipt of a petition signed by "at least one-half of the parents or legal guardians of pupils attending the school . . . the local educational agency ***shall implement*** the option requested by the parents . . . ." Cal. Educ. Code § 53300 (emphasis added). *See also* Holscher Decl. Ex. 7 (*Adelanto School District*, San Bernardino County Superior Court, (Case No. CIV VIS 1201650)) at 6 ("Since the act states that a local agency "shall" implement the requested corrective action, a local school district has a mandatory duty to implement the corrective action sought when at least half the parents or legal guardians of pupils at a school sign a petition under the Parent Trigger Law."). If after a good faith

investigation, a local educational agency determines that a petition should be returned, it has a mandatory duty to immediately notify the lead petitioners of its reasons for returning the position and provide its supporting findings. *Id.* at §§ 4802.1(g)-(i) ("LEA ***shall*** immediately provide the contact person written notice of its reasons for returning the petition and its supporting findings;" "if the LEA finds that sufficient signatures cannot be verified by the LEA it ***shall*** immediately notify the lead petitioner contacts and ***provide the lead petitioners the names of those parents and legal guardians it cannot verify;***" "the LEA ***shall identify which signatures need verification, any errors found*** in the petition or any need for further clarification regarding the petition"). Petitioners then have 60 days to verify signatures, add signatures, make corrections to the petition, and resubmit it. *Id.* at §§ 4802.1(h), (i).

The District has violated its ministerial duty, either by improperly rejecting the Petition or by refusing to provide the Lead Petitioners with the details regarding its reasons for rejecting the Petition, thus denying them a meaningful resubmission opportunity. Accordingly, Petitioners request that the Court require the District to either accept the Petition or show cause before this Court regarding why it need not do so, including by providing all of the bases supporting its decision not to count petitions for 133 students.

1. The January 14 Petition Met the Requirements of the Parent Trigger Law.

The Petition fully satisfied the Parent Trigger law and regulations, thus removing any authority or discretion from the District to return the Petition. The Petition met, and far exceeded, the minimum threshold of 367 or 50% of students. The District admits that it received signatures that purported to represent ***488 Palm Lane students***—leaving a ***16% buffer of 121 students***. Holscher Decl. Ex. 1 at 2. The will of the Parents—expressed in the Petitions—was, and remains, crystal clear. By choosing to convert Palm Lane into an independent charter school, the Parents determined to change the course of Palm Lane from a failing school to one that provides an adequate education for their children. *See* Writ Petition ¶ 18. This is precisely the sort of "Parent Empowerment" for which the Parent Trigger law was enacted. Moreover, it is exactly the "core political speech" that a writ is necessary to protect. *See Reed*, 561 U.S. at 195 (right to petition is

"core political speech"); *Molar v. Gates*, 98 Cal. App. 3d 1, 25 (1979) (the government has a "clear duty" to respect constitutional rights).

2. On February 19, the District Violated Its Duty to Accept the Petition and to Issue a Final Disposition Permitting the Parents to Commence the Charter School Solicitation Process.

Under the Parent Trigger law and regulations, each Petition signature is presumptively valid. The District has a 40-day period of time after the submission in which it "***may***" make reasonable efforts to verify the signatures on the petition." *See* Cal. Code Regs. tit. 5, § 4802.1(b); *see also id.* § 4802.1(g). Importantly, the District could only reject the Petition if it determined that (1) parents or legal guardians of at least 50% of the eligible Palm Lane students had not signed the Petition; (2) Palm Lane is not a subject school; or (3) the Petition did not meet the requirements specified in section 4802." *Id*. at § 4802.1(g). Because the District had no basis to return the Petition under any of these (*see infra* § 2(a)-(c)), the District had a mandatory duty to accept the Petition. *See id*.; *see also Downtown Millbrae v. Wade*, 108 Cal. App. 4th at 128-29 (enforcing the city clerk's duty to certify a petition which complied with submission requirements).[1]

In defiance of this duty, the District returned the Petition on February 19. Writ Petition ¶ 3. The District cited four reasons for doing so. *Id.* Each of these is improper. *First*, the District found that the Petition did not meet the 50% threshold requirement. As described below, however, the District appears to have improperly discounted presumptively-valid petitions of parents whom the District claims it could not reach. *See* Writ Petition ¶¶ 35-36. Despite the limited information the District has provided to date, the addition of the 14 students in this category alone would elevate the Petition above the 50% threshold requirement. *See id.* at Attachment C. *Second*, the District incorrectly found that Palm Lane is not a "Subject School," despite clear precedent from federal and state authorities and the *District's own admission* to the contrary. Writ Petition ¶¶ 25-33. *Finally*, in defiance of its obligation to accept a petition that "substantially meets the requirements" of the Parent Trigger law, the District claimed that the Petition was invalid based on two minor

[1] To the extent the District claims that it had a duty to affirmatively verify presumptively-valid petition signatures (*see* Holscher Decl. Ex 1 (2/19/15 Presentation)), it is incorrect. *See infra* § 2(a).

technicalities. Writ Petition ¶ 39.[2]

a. The District Improperly Discounted Signatures to Bring Petitioners Below the 50% Threshold.

The District is required to accept the Petition if it is signed by parents or legal guardians of one-half of pupils and "substantially meet[s]" the Parent Trigger requirements. Cal. Code Regs. tit. 5, §§ 4802.1(g)(1) and (3).[3] Moreover, the regulations say that the District ***"may"*** make reasonable efforts to verify (§ 4802.1(b)) petitions, but it cannot reject a signature absent an affirmative, good faith basis to determine that the signature was not, in fact, that of a parent or legal guardian of a Palm Lane student. *Id*. § 4802.1(g)(1). Under the regulations, therefore, the District's duty is not to attempt to invalidate (or even affirmatively verify) signatures, but rather to accept presumptively-valid signatures submitted by Palm Lane parents. The District's inability—or refusal—to verify presumptively-valid signatures therefore does not render those signatures invalid.

Here, the District admits that it has been able to verify petitions representing 355 students. Holscher Decl. Exs. 5 (Letter from District) at 7; 1 (2/19/15 Presentation) at 2. The Board also invalidated petitions for 133 students, leaving the Petitioners just 12 students short of the 367 supposedly needed. Holscher Decl. Ex. 1 (2/19/15 Presentation) at 15. The District has concealed its reasons for discounting each of the petitions it deems "invalid" (*see infra* § 3). Nevertheless, based on what little information the District has provided, it is obvious that the District has abused its discretion in failing to count presumptively-valid signatures for the sole purpose of dragging the number of students for which there are "verified" petitions below the 50% threshold. These actions are not permitted by the letter or spirit of the Parent Trigger law.

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[2] The District does not claim (nor could it) that the Petition did not comply with the other formal requirements of the Parent trigger regulations. *See* Ochoa Decl. Ex. 25; Cal. Code Regs. tit. 5, § 4802(a). Indeed, in compliance with these regulations, the Petition included: the required heading and statement of intent; the name and contact information of the person to be contacted regarding the petition; the name of the subject school; signature boxes; and an affirmation that the signing parent or legal guardian does, in fact, request to implement the reform identified at the subject school. *See* Ochoa Decl. Ex. 25; Flores Decl. Ex. 27.

[3] The regulations do not allow the District to reject presumptively valid petitions based on minor technicalities. *See* Cal. Code Regs. tit. 5, § 4802.1(b) ("LEA shall not invalidate the signature of a parent or legal guardian of an eligible pupil on a minor technicality assuming the parent or legal guardian is entitled to sign it."). *See also infra* § 2(c).

For example, the District deliberately failed to count presumptively-valid petitions for 14 students whose parents the District claims it could not reach.[4] *See* Holscher Decl. Ex. 5 (3/19/15 Letter from District) at Attachment C. But the District's inability to verify petitions does not make them invalid. The District does not claim that these petitions were not provided by parents of enrolled students, with all of the required information for those students. The District's decision not to count these 14 students contradicts its ministerial duty to accept petition signatures unless it "*determines . . . the parents or legal guardians of pupils [attending the subject school or attending matriculating schools]* ***have not signed the petition***." Cal. Code Regs. tit. 5, § 4802.1(g)(1). There is no evidence that the District uncovered such information for these students.

Moreover, based on the limited information the District has provided to date, it appears the District's rejection of other petitions may also be improper.[5] First, although the District has not clarified the date it used for determining whether a student was enrolled at Palm Lane, it may not be using the date the Petition was submitted, as required by the regulations. *See id.*at § 4802.1(d); *see also* Holscher Decl. Ex. 5 (3/19/15 Letter from District) at 7 (stating that the District "verified that 95 purported students could not be counted towards the 50% threshold as those students were *not enrolled at Park Lane [sic] Elementary* (e.g., never attended or were not District students as of *the* [undefined] *date*)" (emphasis added)). Second, the District cites no authority that permits it to invalidate petitions simply because a student's name was not found in its Aeries System. Third, the District states that it invalidated petitions for 24 students because the parent claimed never to have signed the petition. Holscher Decl. Ex. 5 (3/19/15 Letter) at 7-8, 16. But the District provides no evidence to support its suggestion that these signatures were forged. Finally, the District cannot use "rescission" forms to deduct signatures from the Petition submitted on January 14, 2015. Holscher Decl. Ex. 7 (*Diaz v. Adelanto School District*, San Bernadino County Superior Court, (Case No. CIV

[4] In its February 19, 2015 presentation, the District claimed that it was unable to verify 12 petitions. In its March 19, 2015 letter, however, the District revised this number to 14. *See* Holscher Decl. Ex. 5 (3/19/15 Letter from District) at 8.

[5] Petitioners do not waive their ability to challenge the District's rejection of any of the purportedly invalid petitions. Indeed, the District's concealment of its reasons for invalidating the remaining petitions makes it impossible to do so at this juncture.

VIS 1201650)) at 7. This list is not meant to be exhaustive, as the District has not provided sufficient details for the Petitioners to fully understand the District's position for the 133 uncounted students.

Although the District has concealed its reasons for invalidating each petition, it is clear that the District improperly discounted the presumptively-valid petitions for 14 students whose parents the District claims it could not reach. Because the addition of these signatures brings the Petition above 50%, the District should be ordered to accept the Petition submitted on January 14, 2015.

b. The District's Claim That Palm Lane Is Not a "Subject School" Is Erroneous and Directly Contradicts the District's Own Admission and Guidance from Federal and State Authorities.

Under Parent Trigger, a "subject school" is one identified by the State Superintendent of Public Instruction (SSPI) following the release of the annual yearly progress report that: (1) is not one of the persistently lowest-achieving schools; (2) has been in corrective action under the federal Elementary and Secondary Education Act, known as the "No Child Left Behind" law (NCLB), for at least one full year (3) has failed to make adequate yearly progress (AYP); (4) has an Academic Performance Index of (API) score of less than 800; and (5) as not exited Program Improvement.

For nine out of the last ten years, the SSPI determined that Palm Lane failed to make AYP, including the last reporting year—2012-2013. Regardless, the District now seeks exemption from Parent Trigger simply because the California Department of Education made a unilateral decision not to report AYP for the 2013-2014 school year.[6] *See generally* Holscher Decl. Exs. 1 (2/19/15 Presentation) at 5; 5 (3/19/15 Letter) at 6. Nothing in the Parent Trigger law or its implementing regulations specifies that the SSPI's AYP determination for Palm Lane must have been made during the preceding 2013-2014 year. In fact, the text of the Act itself does not require any determination by the SSPI; it merely requires a showing that Palm Lane "continues to fail to make adequate yearly progress." Cal. Educ. Code § 53300. That requirement is clearly met here.

[6] As set forth in the accompanying Petition for Writ of Mandate, the District claimed that it had not reached a final disposition on the Petition, and offered parents a 60-day extension to resubmit the Petition. Writ Petition ¶¶ 5, 46. *One day* after the Lead Petitioners accepted this extension, the District filed suit against Lead Petitioners in this Court, claiming that even if parents were to cure perceived deficiencies with the Petition, the District would not approve it because Palm Lane is not a subject school. These actions highlight the District's continuous bad faith towards the Lead Petitioners and intention to reject the Petition under any circumstances. *Id.*

Even assuming the District is correct that the regulations require a prior-year determination, the text of the Act itself and its legislative purpose guide against the application of the regulations to bar the parents' Petition here. To permit the same state department responsible for implementing the regulations and making the necessary AYP determination to then unilaterally strip parents of their rights under Parent Trigger by simply deciding not to make the requisite determination would be directly contrary to the legislative intent of the Act. The regulations may not be used to undermine the intent of the statute, which is to empower parents to effect change. *See Transworld Sys., Inc. v. Cnty. of Sonoma*, 78 Cal. App. 4th 713, 717 (2000) ("Regulations must be construed in a manner consistent with the legislative purpose, and may not conflict with the statute."); Cal. Gov't Code § 11342.2 (no regulation is effective unless consistent and not in conflict with the statute and reasonable necessary to effect the purpose of the statute); *see also Reed*, 561 U.S. at 195; *Meyer*, 486 U.S. at 420. Because the District's interpretation completely annihilates Parent Trigger as applied to this Petition, it falls far short of the "exacting scrutiny" required by the First Amendment and must be rejected.

The District's argument is further belied by its own admission that Palm Lane is currently subject to the Parent Empowerment Act. Holscher Decl. Ex. 8 (10/2/14 Letter from L. Wagner). In an October 2, 2014 letter to parents of Palm Lane students, the District admitted that for the current academic year Palm Lane continued to be identified as a year 5 Program Improvement school "because it did not achieve Adequate Yearly Progress in 2012-13." The District even identified "Parent Empowerment" as an option that parents, "dissatisfied with their children's struggling schools," may employ to affect change. *Id.* at 2. Having identified the Parent Trigger act as a viable option for parents seeking to improve Palm Lane, the District cannot now claim that Palm Lane is exempt. *See also* Holscher Decl. Ex. 9 at 20-22 (11/17/14 Board Presentation).

The SSPI himself also confirmed that Palm Lane remains a subject school. Holscher Decl. Ex. 10 (4/2/14 Letter from Superintendent Torlakson). In an April 2, 2014 letter, the SSPI, Tom Torlakson, specified that Palm Lane remains in Program Improvement and subject to corrective action under NCLB, regardless of the federal government's waiver. It is therefore illogical to assume that the California Board of Education intended to exempt Palm Lane from Parent Trigger.

Additionally, the Legislative Counsel Bureau has rejected a similar argument that the U.S. Department of Education's waiver would exempt Palm Lane from Parent Trigger. Holscher Decl. Ex. 11 at 8 (11/21/14 Letter from Legislative Counsel Bureau to Hon. B. Huff).

Finally, under California's own definition, Palm Lane did not make AYP in the 2013-2014 school year. To do so, every *single* student at Palm Lane would have had to test proficiently in English-language arts and math. Holscher Decl. Ex. 14 at 30. It is simply implausible that Palm Lane could have met that requirement. Further, because Palm Lane's API score for 2013-2014 is either 746 (most recent) or 765 (three-year average) and does not reflect any actual testing, Palm Lane cannot demonstrate actual growth in its API or that it satisfied the minimum API required, which in 2013 was 770. *Id.* at 33.

c. The District Erroneously Attempted to Reject the Petition Based on Minor Technicalities.

The District is required to accept petitions that "substantially meet" the Parent Trigger law requirements, and is prohibited from invalidating petitions on "minor technicalit[ies]." Cal. Code Regs. tit. 5, §§ 4802.1(b) and (g)(3). The District's remaining stated reasons for rejecting the Petition fly directly in the face of these mandates.

First, the District claims that it was entitled to reject the petition because the Parents did not submit a separate document identifying the lead petitioners. Writ Petition ¶ 34. The District's position is baseless. The names of the Lead Petitioners were included in the petition packet submitted to the District on January 14. *Id.*, Flores Decl. Ex. 26. The Lead Petitioners were also identified to the District on multiple other occasions before February 19. Holscher Decl. Ex. 21 (2/12/15 Letter from G. Romero). In addition, the District now acknowledges that it received a list of lead petitioners. *See* Holscher Decl. Ex. 22 (2/23/15 Letter from J. Fernow); Ex. 5 (3/19/15 Letter from District) at 6 (noting the District returned the Petition to lead petitioners when identified).

Second, the District contends that the Petition did not contain a description of the requested intervention. Holscher Decl. Ex. 1 (2/19/15 Presentation) at 8-11. This position is likewise without merit. The District's own findings *admit* that both the English and Spanish versions of the Petition expressly referred to the "Restart Model" as the requested intervention. *Id.* at 11. Furthermore, both

versions of the Petition attached a copy of Section 4804, the statutory language describing the Restart Model (Flores Decl. Ex. 27), and therefore fully complied with the requirements of the regulations. *See* Cal. Code Regs. tit. 5, § 4802(a)(5) ("A description of the requested intervention *using the language set forth* in either sections 4803, 4804, 4805, 4806, or 4807 . . .").

3. The District Also Violated Its Duty Under the Parent Trigger Law to Provide Information to the Lead Petitioners.

The Parent Trigger law's implementing regulations set forth a statutory scheme that requires the District to work with the Lead Petitioners to resolve: (a) any discrepancies, problems, and errors in the Petition; (b) matters needing clarification; and (c) signatures requiring verification. Cal. Code Regs. tit. 5, § 4802.1(g)-(i). The regulations also require the District to provide the Lead Petitioners with the details supporting the results of its review. *See id.* § 4802.1(h). Petitioners then have 60 days following the return of the petition to verify signatures, add signatures, make any corrections to the petition, and resubmit it. Rather than complying with its duties, however, the District unlawfully withheld the details of its findings regarding the Petition, precluding the Lead Petitioners from addressing the Petition's alleged deficiencies. Moreover, even when the District has provided information, it has only done so after engaging in a pattern of delay designed to deny petitioners a meaningful opportunity to resubmit.

On March 6, the Lead Petitioners requested from the District information regarding its rejection of the Petition, including a list of the 133 students the District did not count. Holscher Decl. Ex. 2 (3/6/15 Letter to District). Despite multiple follow-ups from the Lead Petitioners, and despite the fact that the 60-day resubmission period was running, the District refused to provide this list—or any substantive response—for nearly *three weeks*. Holscher Decl. ¶ 6; Ex. 5 (3/19/15 Letter from District). Even then, the District's response, received by counsel for Lead Petitioners on March 24, fell short of meeting the District's disclosure obligations under the law. The District's assertion that it "is not required to provide the details of its verification of each signature found invalid" (Holscher Decl. Ex. 5 (3/19/15 Letter from District)) is in complete contravention with the express, non-discretionary requirement of the law that the District "identify which signatures need verification, any errors found in the petition, or any need for further clarification regarding the

petition." Cal. Code of Regs. tit. 5, § 4802.1(i). While the March 24th communication did, for the first time, provide a complete list of rejected names, noticeably absent was a complete explanation as to why the District has deemed the petitions insufficient. Although the District has provided some limited information about the "unverified" signatures for 14 students, it has remained silent on the remaining "invalid" signatures. Moreover, is not clear whether any of the signatures from the subset of 14 students are "invalid" for some other reason undisclosed by the District (e.g., not signed by a legal parent or guardian). The District has similarly refused to provide parents with access to the student enrollment information relied upon in rejecting numerous petitions. Because the District did not provide information sufficient to afford Lead Petitioners a meaningful resubmission opportunity, Lead Petitioners were forced seek writ relief.

D. The Petitioners Have a Clear, Present, and Beneficial Right to Performance of the District's Duty to Accept the Parent Trigger Petitions.

Petitioners have a clear, present, and beneficial right to the District's performance of its duty to validate the Petition. "To establish a beneficial interest, the petitioner must show he or she has some special interest to be served or some particular right to be preserved or protected through issuance of the writ." *Doe*, 190 Cal. App. 4th at 683; *see also Payne v. Super. Ct.*, 17 Cal. 3d 908, 925 (1976). Petitioners plainly satisfy this broad standard. Indeed, in the context of a § 1085 writ of mandate, courts have repeatedly recognized that parents have a beneficial interest in their children's education. *Doe*, 190 Cal. App. 4th at 684-85 (finding that parents have beneficial interest in ensuring that school district follows curriculum standards set by State Legislature); *see also In re Samuel G.*, 174 Cal. App. 4th 502, 509 (2009).[7] Additionally, the students at Palm Lane have a beneficial interest in their *own* education, and thus in the District's compliance with the Parent Trigger law. *See Doe*, 190 Cal. App. 4th at 683-84 (finding that elementary school students have a beneficial interest in school district's compliance with state curriculum requirements). Accordingly,

[7] *See also Mission Hosp. Reg'l Med. Ctr. v. Shewry*, 168 Cal. App. 4th 460, 480, 485 (2008) (noting that "a public right is involved, and the object of the writ of mandate is to procure enforcement of a public duty, a citizen is beneficially interested . . . if he is interested in having the public duty enforced.") (internal quotations and citations omitted); *Hogar Dulce Hogar v. Cmty. Dev. Comm'n of City of Escondido*, 110 Cal. App. 4th 1288, 1294-95 (2003) (noting that the purpose of the public interest exception is to "permit citizens and organizations to enforce limitations on governmental action and require governmental agencies to fulfill their responsibilities").

Petitioners here have a clear interest—both as parents and as citizens—in ensuring that the Parent Trigger law is executed and that the District accepts the Petitions, as required.

E. The Only Adequate Remedy Is a Writ of Mandamus Commanding the District to Accept the Petition and Issue a Notice of Final Disposition Permitting the Parents to Commence the Charter School Solicitation Process.

Mandamus is pivotal here because Petitioners have no other adequate remedy at law. *See Dowell v. Super. Ct.*, 47 Cal. 2d 483, 486 (1956) (finding that where an order is not appealable and there is no plain, speedy or adequate remedy in the ordinary course of law, mandamus is the appropriate remedy to obtain the relief sought). When, as under the Parent Trigger laws, the petitioner has no recourse to appeal the government's dereliction of duty, a writ of mandate is the appropriate relief. *San Joaquin Cnty.Emps. Assn. v. City of Stockton*, 161 Cal. App. 3d 813, 820 (1984) (affirming trial court's finding that there was no adequate remedy where improper government action disrupted the bargaining process). Petitioners will suffer irreparable injury if a writ of mandate is not issued requiring the District to immediately accept the Petition or identify the bases upon which the District invalidated the petitions for 133 students, so that the Petitioners can either cure the Petition or proceed with the process of soliciting and selecting among charter school proposals. Indeed, if the District is permitted to delay the Petition any further, the parents will lose all hope of completing the steps required to obtain funding from the State in time to convert Palm Lane into a charter school in time for the next academic year. This will irreversibly harm the children by depriving them, for yet another year, of a constitutionally adequate education. Petitioners and their children cannot afford to wait any longer; a writ of mandate is necessary.

IV. CONCLUSION

For the foregoing reasons, the Court should grant this petition for a writ of mandate and require the District to either accept the Palm Lane Parents' Petition as valid or show cause before this Court as to why it need not do so, including by providing a complete disclosure of the legally-valid basis or bases supporting the District's decision not to count each of the "invalidated" or "unverified" petitions for 133 students.

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