SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 07/16/2015 TIME: 02:21:00 PM DEPT: C11

JUDICIAL OFFICER PRESIDING: Andrew P. Banks
CLERK: Myra Nakata
REPORTER/ERM: None
BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2015-00782615-CU-WM-CJC** CASE INIT.DATE: 04/15/2015
CASE TITLE: **Ochoa vs. Anaheim City School District**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT ID/DOCUMENT ID: 72199961

EVENT TYPE: Under Submission Ruling

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 07/07/2015 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows: A copy of the Court's Decision and Order is attached hereto and incorporated herein by reference.

The Case Management Conference is scheduled for 07/23/2015 at 09:00 AM in Department C11.

Court orders clerk to give notice.

DECISION and ORDER

(CCP §632)

OCHOA vs ANAHEIM CITY SCHOOL DISTRICT

30-2015-00782615

The State Legislature and former Governor Arnold Schwarzenneger passed and signed into law respectively an act known as the Parent Empowerment Act (hereinafter "Act"). One of the authors of the Legislation (Senator Gloria Romero, now retired) is entwined in the actions underlying this Writ Petition.

The Act, in a nutshell and as relevant here, allows parents of children in poor performing schools to force change onto the school district. The change is of several options, including establishing a charter school in place of the District run school.

This proceeding involves parents of students at Palm Lane Elementary, a school whose performance over 10 of the last 11 years as measured by the legislatively imposed standards can be described as abysmal.

This Writ Petition is the first of several issues and matters pending and to be decided by the Court. The parties agreed that the Court should address the issues of whether the school in question is a "subject school" as that term is used in the Act and if so, whether the Petition and the process relating to gathering the signed petitions as well as the District's verifying of signatures complied with the Acts requirements.

The Petitioners seek an order that the Respondents, Anaheim City School District and Anaheim City School District Board of Education, set aside their rejection of the Petition and grant the Petition to transform Palm Lane into a charter school. The Respondents ask the Court to uphold the Board's findings that Palm Lane is not a subject school and that the Petition fails to comply with various requirements, to wit: (1) the Petitioners failed to submit a separate document that identifies the lead petitioners when the Petition was submitted, (2) the Petition failed to comply with Title 5 California Code of Regulation Section 4804; and (3) The petition did not meet the 50% of parent or legal guardian signature requirement of the Act.

The Respondent Board rejected the Petition in Exhibit 16, which is entitled:

"Board Findings and Action Regarding parent Empowerment Petition (Palm Lame Elementary School)"

Exhibit 16 is dated February 19, 2015. In the section entitled "Action" the last sentence in relevant part reads "Accordingly, the Petition...is rejected."

Respondents sought to characterize the rejection as something less, arguing in the trial brief and at trial that the action of February 19th was not a final determination on the Petition (Respondent's Trial Brief at page 1, lines 17-23 and page 25 lines 3-5). They presented their case in part on the theory that the Petition was returned as allowed under 5 CCR Section 4802.1(g)(j) and not rejected. The language used by the District's Board plainly says otherwise. They rejected the Petition they did not return it.

The Respondents also argue that this Court lacks jurisdiction to hear this matter as well as to grant relief because the Petition was not rejected but only returned and therefore Petitioners have failed to exhaust their administrative remedies. This argument fails because the Respondents rejected the Petition.

I find the rejection to be procedurally unfair, unreasonable, arbitrary and capricious.

The Issue of Subject School

Is Palm Lane a subject school under the Act? Clearly it is in the Court's judgment.

The Definition of a subject school has 5 elements to it (5 CCR §4800.1(k)). The only element relevant to this matter is the one requiring that such a school "has failed to make adequate yearly progress (AYP)".

The Respondents own internal communications admit to the fact that Palm Lane is a subject school subject to the Act and has failed to make AYP. Exhibits 29, 31, 32, 67 and 80 are just some of those communications.

The reliance of the Respondents upon Exhibit 47 and the determination by State Superintendent of Public Instruction, the Honorable Tom Torlakson, that no 2014 AYP report for elementary and other schools would be prepared by the California Department of Education did not provide a safe harbor against parents utilizing the Act as the Respondents argue. Instead, it froze those schools and districts in their status based on prior measured AYP results. The evidence clearly establishes that Palm Lane failed to make adequate yearly progress. I therefore find that Palm Lane is a subject school under the Act.

The Petitions Validity and Sub-Issues

The Respondent District's Board in its February 29, 2015 Findings and Actions (Exhibit 16) found amongst other things, the following:

> "The Petitioners failed to submit a separate document that identifies the lead petitioners;"
>
> "The Petition does not include a description of the Restart Model as required under Title 5, Cal.Code Regs., §4804";
>
> "The Petition does not meet the one-half (50%) of parents or legal guardians of pupils signatures requirement."

I will address each of these findings individually and in the order they have been stated.

The evidence on the "lead petitioner list" issue was directly contradictory. The Petitioners said they provided it when they delivered the signed petitions to the District at the District's Office on January 14, 2015. The Respondents said they never got it. After considering all the evidence I resolve this issue in favor of the Petitioners. In particular, I find the testimony of Alfonso Flores to be persuasive and he to be the most credible witness on this issue, and probably in the entire case.

I would be remiss however if I left the issue there. The behavior of the Respondents personnel in doing absolutely nothing to determine who the lead petitioners were can not go without comment. Wisely or not, the Act requires the Local Educational Agency (LEA) to work with the lead parent petitioners in the process. In practical terms it means the Districts must cooperate and work together with the very people who seek to take from the District a school (and its funding etc) and to establish in its place a charter school. No clearer repudiation of a school district's performance could be imagined.

I find that the Respondents' claimed ignorance of the identity of the lead parents and ignorance as to how to learn their identity (feigned and contrived ignorance in the Court's view) is unreasonable. They could have looked at the "sign in sheet" for January 14th when the petitions were delivered to see which parents were there – but they did not. They could have called the name and phone number of the person listed on most of the petitions; which information was listed after the words:

> "For more information, all interested persons, the school district, and others should contact:" (emphasis added)
>
> [Name and number omitted by the Court]

And if that was not enough, immediately below the name and phone number of the contact person were the words:

> "Supporting organizations"

with the name of two supporting organizations, one of which is headed by Senator Romero, with whom the evidence showed the Respondents were well acquainted.

Any of those acts would have been what a reasonable person would have done and what a reasonable process would have called for. Instead, they manufactured a continuing state of ignorance as to the lead person identities.

Finally, and not to beat a dead horse, Senator Romero herself wrote to Respondents and offered to put them in touch with and coordinate between the District and the lead parents (Exhibit 49, page TX 049-003 to 006). Respondents never responded to her offer.

On July 2, 2015 while testifying before the Court the District Superintendent testified that even on that day she still did not know who the lead petitioners were. The evidence established that Exhibit 97 (list of petitioning parents, i.e. lead petitioners) was again provided shortly after the District findings were announced on February 19, 2015. How she could not know the identities is troubling.

Clearly, the Respondents did not meet their obligations of good faith cooperation with respect to this issue and as mandated by the Act.

<u>The Issue of the Petitions Compliance with 5CCR §4804 and the Restart Model</u>

The Petitions were printed in English and Spanish. The testimony was that the signature gatherers were provided packets to be utilized in each contact with a potential petition signer and the packets were given to each person who signed a petition.

There was a difference in the first paragraph of the petitions. In the English version, on the second to the last line through the end of the sentence, the following words appear:

> ..."(CCR), Title 5, section 4804 and attached to this petition."

In the Spanish language version everything following "(CCR)," is missing.

The regulations require that the petition amongst other things contain identification of the requested intervention (§4802(a)(4)) and "a description of the requested intervention using the language set forth in either sections 4803, 4804, 4805, 4806 or 4807 without omission to ensure full disclosure of the impact of the intervention." (§ 4802(a)(5))

The contents of the package that went along with each petition contained an extra copy of the petition (in the language appropriate to the signers preferred language) as well as copies of the required regulatory provisions (See e.g. Exhibits 108 and 122).

Now clearly the required regulatory materials were not attached – they were enclosed within the packet. The evidence convinces the Court that the necessary and required information was provided to the petition signer and discussed with them by the signature gatherers. The testimony of witnesses including Ms. Romero and Mr. Flores regarding the training process, inclusion of materials in the packets, the checking of same to be sure they were complete and the following of instructions by the gatherers are persuasive to the Court and I find them to be credible witnesses. Therefore, I find that the Petitioners substantially complied with the requirements of 5 CCR §4804 and the Restart Model and the Petitions must not be rejected on this ground.

The Issue of the 50% Threshold

The Respondents have declared that the Petitioners submitted 355 verified signed petitions (sometimes called valid petitions) but needed to submit 367 such petitions to meet the requirements of the Act. (See e.g. Exhibit 65, page TX065 – 015)

Under the Act and its related regulations, the Respondents as an LEA may verify signatures on petitions, but they are not required to do so; and if they undertake to do so their efforts must be reasonable. 5 CCR § 4802.1 (b).

I find that the process set up and utilized by Respondents was unreasonable, unfair and incomplete.

The process was developed by a temporary employee (Evelyn Gutierrez) who was given no training or education about the Act, the Regulations or the importance of what she was being asked to do. She had no background, training or experience in handwriting analysis or

comparison. She was not supervised in any meaningful regard. She received no written procedures to follow. She had to develop the script she used when calling parents phone numbers. The deficiencies in the process used were substantial; so substantial that it made it an unreasonable, arbitrary, caprcious and unfair process. In fairness it must be noted that Ms. Gutierrez did her best in the situation into which she was placed.

The result of this defective process was that valid signed petitions were not counted. Ms. Gutierrez testified to several petitions she rejected that on reflection should have been determined valid. In addition she testified that a number of petitions were placed by her in a "pending" status because she could not reach the parent signatory or for some other reason. Someone, not Ms. Gutierrez, later decided to improperly classify those petitions as invalid.

A brief description of the signature verification process is in order. Ms. Gutierrez would call the phone number twice to try and reach a parent signatory. She called between approximated 8:30AM and 4:30PM. If she could not reach the person, she would put them in "pending". If she reached the parent she inquired about their signing the petition. Calling only during normal working hours for the parents decreased the probability of making contact.

Some persons reached by phone said they had signed; others said their spouse signed; others said they could not recall if they signed and finally some denied they had signed.

Some children had separate petitions signed by each parent. If the first petition signature could not be verified there was no attempt to look at the other signed petition to verify the accuracy of the signature on that petition.

In sum, there are numerous deficiencies in the process. The result of the flawed process was that valid signatures sufficient to reach and exceed the 50% threshold were improperly excluded.

In the interest of brevity I attach and include a list of 29 students and parents utilized in argument and entitled "Improperly Invalidated Petitions (Child/Parent)". I have independently evaluated the evidence relating to some but not all of the 29, stopping once a total of 23 additional valid signed petitions were established. Inasmuch as the Respondents determined and found the Petitioners were 12 valid petitions short there is no need to go further. The Petitioners needed 367, the Court finds they presented a minimum of 378. Using the aforementioned chart, the Court determines the following numbers referenced thereon were valid petitions: 1 – 7; 9; 13 -24; 27 -29. The Court does not reach items 25 and 26.

Conclusion and Order

I find that the findings supporting the Respondents rejection of the Petition were not valid. Therefore I will grant relief to the Petitioners.

Petitioners' counsel is ordered to prepare a proposed Writ of Mandate for the Court's signature reflecting this Court's Order that a Writ of Mandate issue requiring Respondents to do the following:

1) Within 20 calendar days of the date the Writ is signed, rescind the February 19, 2015 action of the Anaheim City School District Board of Education that rejected the Parent Trigger Petition; and
2) Within the same 20 calendar days, accept the Parent Trigger Petition submitted on January 14, 2015; and
3) Allow Petitioners to immediately begin the process of soliciting and selecting charter school proposals.

Case Management Conference

In order to determine the best manner to address the remaining matters before the Court, the parties counsel are advised that a Case

Management Conference is set for July 23, 2015 at 9:00 AM in Department C11 of this Court.

Date: 7/16/15

Andrew P. Banks
Judge of the Superior Court

Improperly Invalidated Petitions
(Child/Parent)

Parents Signed Affidavit, Marked As Unverified

1. **Alondra Gutierrez** (Christina Marquez)
2. **Ashley Ordonez** (Selvin Ordonez/Georgina Villapondo)
3. **Luis Ordonez** (Selvin Ordonez/Georgina Villapondo)
4. **Edgar Narvaez** (Edgar Narvaez)
5. **Mariana Madrid** (Carlos Madrid)
6. **Uriel Jasso** (Julio Jasso)
7. **Yuliana Jasso** (Julio Jasso)

Marked As Unverified

8. **Adrianna Albarran** (Gloria Aguirre)
9. **Cesar Romero** (Keico Romero)
10. **Kevin Lupercio** (Maricela Lupercio)
11. **Natalie Pardo** (Harvin Atrian)
12. **Traivon Nicholson** (Traivon Nicholson)

Parents Signed Affidavit

13. **Bryan Bonilla** (Santiago Bonilla)
14. **Jasmine Bonilla** (Santiago Bonilla)
15. **Christian Ortega** (Elvira Bahena)
16. **John Ortega** (Elvira Bahena)
17. **Gustavo Hernandez** (Delia Rodriguez)
18. **Michelle Hernandez** (Delia Rodriguez)

Invalidated As Inactive Even Though Enrolled on 1/14/15

19. **Ethan Gutierrez** (Gladis Medel)
20. **Nathan Gutierrez** (Gladis Medel)
21. **Marlene Rodriguez** (Estevan Perez)

Improperly Invalidated Petitions
(Child/Parent)

Improperly Invalidated As A Duplicate

22. **Valentina Nolasco** (Cristina Bedolla)

Confirmed Invalid But Actually Unverified

23. **Edith Arlene Hernandez** (Maria Navarro Roman)
24. **Maria Jose Aldana Navarro** (Maria Navarro Roman)

Signature Matches Even Though Parent "Denied Signing"

25. **Karla Alvarez** (Carlos Alvarez)
26. **Gail Aitor Fernandez** (Carlos Alvarez)

Could Not Recall Signing

27. **Christian Garcia** (Juan Garcia)
28. **Ivette Navarro** (Adolfo Navarro)
29. **Cindy Jasmin Rodriguez** (Manuel Rodriguez)