

Low-profile legal fight has big implications for education

californiapolicycenter.org/low-profile-legal-fight-has-big-implications-for-education/

February 26,
2020



A little-known lawsuit in Orange County has important implications for each of California's 58 county departments of education, and chances are you've heard nothing about it.

On November 18, 2019, the Orange County Board of Education sued the Orange County Superintendent of Schools, Al Mijares, because Mijares refused to recognize that the board had any authority whatsoever over the county department of education budget. You read that right: A school executive does not accept that locally elected board members have any say over how taxpayer dollars are spent.

What's worse, this bizarre paradox is not exclusive to Orange County. It has become standard operating procedure throughout California.

The lawsuit in Orange County began in 2014 when a trustee of the Orange County Board of Education looked over the department's budget and asked, "Can we change it?"

Mijares told the board members they had just two options – to summarily approve or reject his budget. The elected officials could not even propose changes, never mind actually change anything, he said. In this bizarre-world, the trustees could only accept Mijares's budget or reject it multiple times until they created a budget crisis – teachers and other education staff laid off, schools closed, children and families stranded.

If that seems to contradict everything you thought you knew about local government, you're right – and you have state law on your side.

The county superintendent's powers are set forth in Education Code §1240. Section 1240(a) provides only that "the county superintendent shall ... superintend the schools of his or her county." Section 1240 gives the county superintendent absolutely no express authority over

the budget. In fact, §1240 goes on to require the superintendent to report to the county board on all material financial matters (§1240(l)(1)), and the law requires board approval on virtually all expenditures. (See §§1081, 1250, 1251, 1259, 1260, 1271, 1273, 1275 and 1277.)

Section 1240(b) gives county boards the power to “review the county superintendent’s itemized estimate of anticipated revenues and expenditures” and “make revisions, reductions and additions if it deems advisable and proper.” The budget adoption process gives the board, and only the board, the power to hold a public hearing to adopt and approve the budget. (§1620-1622). The “Permissive Code” (§§35160, 35160.1) gives the board the power to otherwise act in any manner that is not preempted by law, and a 1975 California Attorney General Opinion holds that the delegation of the Board of Supervisors authority to approve and review the county Office of Education’s budget vested independent budget authority in County Boards (58 Cal. Ops. Atty. Gen. §1240 g. 90, 91-92 (1975)). What’s more, in 1977 the Orange County Board of Supervisors did just that, passing a resolution delegating its budget authority to the county board.

So where’s the legal authority Mijares says allows the superintendent – and only the superintendent – to shape the budget priorities for the entire county? That says directly elected trustees can talk about that budget but are prohibited from doing anything to actually change it? Mijares’s legal team says it’s in three words in §1040, the section that grants the board the exclusive power to approve the budget “of the superintendent” – specifically, they say, the word “of.”

Throughout the years, county superintendents have relied on that word to assert that the code authorizes the superintendent to produce a budget (a budget that comes out “of the superintendent”) rather than describing the board’s role in approving a budget the superintendent will manage. Reading it their way, Mijares’s supporters say, means that elected officials can only vote up or down on a budget document presented by the superintendent – that is, a budget “of the superintendent.” That purposeful misreading of the word “of” has resulted in years of conflicting legal opinions and budget presentations.

In Orange County, the superintendent has sought opinions supporting his exclusive authority, while the board has sought opinions supporting shared governance.

The decisive battle came in 2019 when the board voted twice to reduce the department’s conference, travel, and lobbying budgets. This was the first test case, but the second test was immediately more difficult.

The board directed Mijares to sign and submit their approved budget based not only on the authority set forth above, but also Education Code §14050 and Title V, California Code of Regulations §17346. Both mandate that the superintendent sign and submit the board-approved budget.

Mijares flatly refused. He then prohibited department staff – men and women paid by taxpayer dollars – to assist the board with filing the budget in the state-approved format. In one incident, the superintendent solicited legal guidance from state officials, never advising the board that he'd done so, and then, when the state advice seemed to serve the board's position, Mijares deliberately misconstrued it.

Ultimately, the board and superintendent filed their own budgets. The parties attempted to resolve the dispute, but Mijares refused to accept a reduction of .03354% of the total department budget. The parties went to court. So, ultimately Mijares's defiance is over a preposition – the word “of” – and approximately \$80,000. Or is it something more?

How did three words in a statute granting local county boards authority morph into unrestrained superintendent authority? The problem is complex, but it boils down to control and complacency.

Without question, county superintendents want to control the power of the purse. Why else would .03354% be the hill on which to die? Bureaucrats exercise control through personnel and budgets. The more people you supervise, and the more money you disperse, the more powerful you are. By law, county superintendents are already the “employer” of their county's Department of Education. But the law is less clear regarding budget authority. As stated above, the law vests considerable authority in county boards of education, and at very least contemplates shared governance among coequal branches of government. Thus, with tradition and more than a few taxpayer-funded lawyers at their disposal, county superintendents have intentionally obfuscated “of the superintendent” to mean that the superintendent has sole discretion to create the budget, present the budget, and hold the department budget hostage if the board has the temerity to question a single line item. So much for shared governance.

So, for years county superintendents have perpetrated the myth that county boards can only summarily accept or reject the superintendent's budget. Much like the stories of Santa Claus and the Easter Bunny are passed down from generation to generation of parents eager to control misbehaving children, the myth of the Supreme Superintendent has been passed down from superintendent to superintendent to control recalcitrant county board members.

Many county board members have passively accepted this subservient role based on the tired chestnut “we have always done it this way.” This can be especially compelling to a new board member who, having just arrived on the dais, typically pays great deference to career educational professionals and/or, like most of us, is befuddled by spreadsheets, accounting jargon and budget codes. Technical public discussions can be difficult, so some board members take refuge in the myth. If the county superintendent has “always” exercised

unfettered budget authority, why even ask questions about bloated conference, travel or lobbying budgets? Thus, by discouraging questions and dissent, the myth perpetuates itself and gains broader acceptance.

Voters too have demonstrated their fair share of complacency. Despite our voracious appetite for dramatic national and international political news, the simple truth is that less-celebrated local elections have a far greater impact on our daily lives. But county board members are elected to reflect the educational values and priorities of their communities. They represent those values by directing attention and resources to the causes that matter to their constituents. It's fair to say that a generic county board member affects your child's daily life far more than U.S. Secretary of Education Betsy DeVos.

Then why have Californians stood by and allowed their local elected officials to be marginalized? There is a simple answer to that: we just didn't know it was going on.

As citizens, we must strongly consider the implications of accepting the centralization of power based on nothing more than a legal fiction. If we accept that county superintendents have unfettered budget authority, we must also accept that county board members have none. And if we accept that logic, we concede that our vote just doesn't matter.

Californians cannot stand for that. The myth that county board members have no say over the budget effectively eviscerates the open discourse and checks-and-balances at the very core of our representative democracy. Thus, the fight in Orange County is worth having and worth watching. It is a fight we should be having throughout California because it is a fight for California and for Californians' right to make decisions for our children's futures.

* * *

Greg Rolan, special counsel to the Orange County Board of Education, is a partner in the law firm Haight Brown & Bonesteel.