csba Education Legal Alliance

August 28, 2015

The Honorable Tani Cantil-Sakauye, Chief Justice, and Honorable Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4783

Re: Response Opposing Request for Depublication
Westchester Secondary Charter School v. Los Angeles Unified School District (2015)
237 Cal.App.4th 1226
California Supreme Court, Case No. S228603
California Court of Appeal, Second District, Case No. B261234
Los Angeles County Superior Court, Case No. BS147845

SUPREME COURT
FILED
AUG 28 2015
Frank A. McGuire Clerk
Deputy

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to California Rules of Court, Rule 8.1125, subdivision (b), the Education Legal Alliance ("ELA") of the California School Boards Association ("CSBA") hereby responds to and opposes the Request for Depublication of the above-named opinion by the California Charter Schools Association ("CCSA") filed August 18, 2015.

CSBA is a non-profit corporation duly formed and validly existing under the laws of the State of California. CSBA is a member-driven association composed of the governing boards of almost all 1,000 K-12 school districts and county offices of education ("COEs") throughout California. The ELA is composed of nearly 730 CSBA members dedicated to addressing public education legal issues of statewide concern to districts and COEs and to their students. The purpose of the ELA, among other things, is to ensure that local governing boards retain the authority to fully exercise the responsibilities vested in them by law to make appropriate policy decisions for their local educational agencies.

The ELA has a distinct interest in the publication of the opinion in *Westchester Secondary Charter School v. Los Angeles Unified School District* ("*Westchester*"). School boards across the State are charged with the legal duty to allocate reasonably equivalent facilities to charter schools operating within their boundaries, and to ensure that such facilities are shared fairly among all students attending both charter and non-charter district schools.

I. The *Westchester* Opinion Meets the Criteria for Publication

California Rules of Court, Rule 1105, subdivision (c), establishes nine bases for certifying an opinion for publication. The *Westchester* opinion meets at least four of these bases.

a. Subdivisions (c)(2), (c)(3), and (c)(4)

The opinion meets the condition set forth in California Rules of Court, Rule 1105, subdivision (c)(2), which considers whether an opinion "[a]pplies an existing rule of law to a set of facts significantly different from those stated in published opinions;" the condition set forth in subdivision (c)(3), which considers whether an opinion "[m]odifies, explains, or criticizes with reasons given, an existing rule of law;" and the condition set forth in subdivision (c)(4), which considers whether an opinion "[a]dvances a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule."

The first and only published opinion to interpret the relevant statutory language is *Los Angeles International Charter High School v. Los Angeles Unified School District* ("*LAICHS*") (2012) 209 Cal.App.4th 1348, 1352 and it stands for the general proposition that a charter school "is not entitled to be placed in the specific location it desires." As the court noted, the charter in that case did "not really dispute" that the district's proposed location for the charter school met "the requirements of section 47614, subdivision (b). Rather, the essence of [the] appeal is the contention the District abused its discretion by not offering facilities at" a specific location that the charter school desired. (*Id.* at p. 1361.) Indeed, the *Westchester* opinion itself notes that "[w]e have already established [that Education Code] section 47614 does not entitle a charter school to facilities in the exact location or locations it desires." (Op. at p. 13.) *Westchester* thus builds on *LAICHS* by defining the contours and what it means for a district to "make reasonable efforts to provide the charter school with facilities near to where the charter school wishes to locate." (Educ. Code, § 47614, subd. (b).)[1] There is also the fact that the charter school in *LAICHS* was asking the court to force the district to accept the facility request midyear. (See 209 Cal.App.4th at pp. 1359-60.) *Westchester* thus clarifies that a school district may consider impacts from a facility request during the request year.

In other words, *Westchester* "[a]pplies an existing rule of law to a set of facts significantly different from those stated in published opinions," "[m]odifies [and further] explains . . . an existing rule of law;" and "[a]dvances a new interpretation [and] clarification . . . of a provision of a . . . statute."

b. Subdivision (c)(6)

Given the extensive history of litigation in California that has existed in regards to charter schools and charter facilities in particular, the opinion certainly meets the condition set forth in California Rules of Court, Rule 1105, subdivision (c)(6), which considers whether an opinion "[i]nvolves a legal issue of continuing public interest." The list of published

[1] To suggest, as CCSA does, that *Westchester* "mere[ly] compar[es] . . . distances" and "does little to build on existing law" is an incomplete characterization of the holding in *Westchester* vis-à-vis *LAICHS*. (CCSA, Request for Depublication, p. 4.)

decisions regarding charter school facilities is long, demonstrating the continued public interest and debate regarding this legal issue and the continued need for additional published decisions such as *Westchester.*

- Granting of Location Preference: As noted above, the appellate court in *LAICHS* held that "[Education Code] section 47614, subdivision (b), does not entitle LAICHS to facilities in the specific location it desires, if so doing would favor charter school students over other district students." (209 Cal.App.4th at p. 1362.)

- Allocation of Classroom Space: In *California Charter Schools Association v. Los Angeles Unified School District* ("*CCSA v. LAUSD* ") (2015) 60 Cal.4th 1221, 1228, this Court held "that in allocating classrooms to charter schools, [a district] must count only those classrooms provided to K-12 noncharter students and not classrooms dedicated to other uses."

- Measurement of Non-Teaching Space: The court in *Bullis Charter School v. Los Altos School District* (2011) 200 Cal.App.4th 1022, 1044 held that "the District may not exclude portions of the comparison group schools' outdoor space due to its belief that the excluded space was unusable (or for any other reason)."

- Co-Location on Multiple Sites: The court of appeal found that the school district in *Ridgecrest v. Sierra Sands Unified School District* (2005) 130 Cal.App.4th 986 abused its discretion by allocating to the charter school facilities over five different school sites without showing that it could not accommodate the charter school at a single site, or minimizing the number of sites.

- Sharing of Space: *Sequoia Union High School District v. Aurora Charter High School* (2003) 112 Cal. App. 4th 185 held that a different portion of Education Code section 47614 "requires a district to allocate facilities to a requesting charter school once the [charter] provides a reasonable projection of at least 80 units of average daily attendance for the following year" and that the charter school's projection in that case were "reasonable."

Moreover, California courts have recognized the importance of according discretion to districts in allocating facilities under Proposition 39 to address and balance the needs of all students. The court's decision in *Westchester*, along with its decision in *LAICHS*, are in line with past case law that illustrates and acknowledges importance of allowing the district to balance the needs of one charter school against the facility needs of other charter schools as well as the facility needs of the district itself. As one court of appeal noted, "[c]harter school students are not entitled to better facilities choices than other district resident pupils." (*Ridgecrest v. Sierra Sands Unified School District* (2005) 130 Cal.App.4th 986 at p. 1001, n. 16; *see also LAICHS*, 209 Cal.App.4th at p. 1362 ["A holding that the District must provide facilities a charter school requests, on demand and without regard to

overcrowding or the impact on other public school students, would tip the balance too far in favor of the charter school"].)

In carrying out the legal requirement to make "reasonable efforts to provide the charter school with facilities near to where the charter school wishes to locate, and shall not move the charter school unnecessarily" (Educ. Code, 47614, subd. (b)), school districts must have the discretion to weigh the charter school's location preference against the impact to existing programs and facilities. The plain language of Proposition 39, in requiring school districts to make "reasonable efforts" to accommodate a charter school's preferred location, expressly confers upon school districts the discretion to weigh such factors. The court in *Westchester* recognized as such, to the benefit of public and charter school students statewide.

II. The *Westchester* Opinion will not Decrease Transparency

CCSA's argument that the court's decision in *Westchester* will abrogate the "transparency" requirement enunciated by this Court in *CCSA v. LAUSD*, *supra*, lacks merit. The two cases focus on different aspects of the facilities request process. *CCSA v. LAUSD* concerned the *number* of classrooms that a district must provide a charter whereas the Court's decision in *Westchester* concerned the *location* of those classrooms that a district must provide a charter. The "show its math" argument in CCSA's request (see pp. 2-3) alludes, of course, to the Court's focus on this issue at oral argument in *CCSA v. LAUSD*. But the attempted analogy is inapplicable. The operative regulation in *CCSA v. LAUSD* (Cal. Code Regs., tit. 5, § 11969.3) calls for a very specific method to calculate the number of classrooms that a district must provide a charter. The Court properly obliged in its *CCSA v. LAUSD* decision. In contrast, determining a location is a much more qualitative process, which is recognized in Education Code section 47614 by terms such as "reasonable" and "near." Moreover, a district's decision to grant a location preference is reviewable in mandate. Thus, the requirement that "reasonable efforts" be supported by substantial evidence already embeds a transparency requirement into the location preference decision.

For the reasons stated above, the ELA respectfully requests the Court deny CCSA's request for depublication of the Court of Appeal decision.

Respectfully submitted,

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State Bar No. 128002

cc: Parties of Record (See attached Proof of Service)

PROOF OF SERVICE

I am employed in the County of Yolo, California. I am over the age of 18 years and not a party to this action. My business address is CSBA/Education Legal Alliance, 3251 Beacon Boulevard, West Sacramento, CA 95691.

On August 28, 2015, I served the following document(s):

Response Opposing Request for Depublication: *Westchester Secondary Charter School v. Los Angeles Unified School District, et al.*, Case No. S228603; After the Published Opinion in Court of Appeal, Second Appellate District, Div. 8, Case No. B261234; Los Angeles County Superior Court No. BS147845

[**X**] (BY MAIL) I caused a copy of said document to be placed in a sealed envelope, and placed the same with the firm's mailing room personnel for mailing in the United States mail at Elk Grove, California in accordance with CSBA's ordinary practices, and addressed to the interested parties below:

[ ] (BY PERSONAL SERVICE) I caused a copy of said document to be hand delivered to the interested parties at:

[ ] (BY FACSIMILE) I caused a copy of said document to be sent via facsimile transmission to the interested parties at:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 28, 2015 in West Sacramento, California.

Anita Ceballos