

MAY 11 2009

MICHAEL D. PLANET
Executive Officer and Clerk
BY: [Signature] Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

M. CLEMENT

In re the Matter of:

Case No.: 56-2009-00336393-CU-WM-SIM

MEADOW ARTS AND
TECHNOLOGY ELEMENTARY
SCHOOL, A CALIFORNIA PUBLIC
CHARTER SCHOOL,

**RULING ON PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

Plaintiff/Petitioner,

(Taken under submission on 04/24/09)

vs.

CONEJO VALLEY UNIFIED SCHOOL
DISTRICT, A LOCAL PUBLIC
ENTITY AND MARIO V. CONTINI,
SUPERINTENDENT,

Defendants/Respondents.

This matter came on regularly for hearing on April 24, 2009 in Courtroom S-3 of the above-entitled court, the Honorable David R. Worley presiding. Petitioner and Plaintiff Meadows Arts and Technology Elementary School appeared by counsel Middleton, Young & Minney, LLP, by Paul C. Minney, Esq. and Andrew G. Minney, Esq. Respondents and Defendants Conejo Valley Unified School District and Mario V. Contini appeared by Miller, Brown & Dannis, by John R. Yeh, Esq. and Sarah L. Sutherland., Esq.

The Court, having taken the matter under submission, rules as follows:

1 Following approval of the MATES charter by the County School Board, the District allocated
2 to MATES certain facilities at the Glenwood Elementary School. The Glenwood facilities are
3 reasonably equivalent to those in which the students would be accommodated if they were attending
4 other public schools of the District, within the meaning of Ed. Code § 47614.

5
6 **DISCUSSION**
7

8 The Court approaches with great caution the invitation to invade the province of a local school
9 board. Its task of educating our children with ever diminishing resources is as difficult as it is
10 important.
11

12 Generally, mandamus may be used only to compel the performance of a duty that is purely
13 ministerial in character. (Code Civ. Proc. § 1085; (2005) *Ridgecrest Charter School v. Sierra Sands*
14 *Unified School Dist.* 130 Cal.App.4th 986, 1002-03; (2003) *Kavanaugh v. West Sonoma County Union*
15 *High School* 29 Cal.4th 911, 916; (2001) *Morris v. Harper* 94 Cal.App.4th 52, 62.) The remedy may
16 not be invoked to control an exercise of discretion.
17

18 The court does not question the District's judgment concerning the best allocation of its
19 educational resources. However, where the legislature has established rights that are not subject to the
20 District's discretionary judgment, the Court must enforce those rights regardless of their fiscal impact.
21 The issue, therefore, is whether the decision concerning the site to be allocated to MATES for its
22 initial school year is ministerial or discretionary. The Court concludes that the County School Board's
23 approval of MATES as a "conversion charter" rather than a "start up charter," creates a ministerial
24 duty to locate the school at the Meadows Site.
25

26 The Charter Schools Act was passed to promote innovative alternatives to traditional public
27 school and to improve school systems through competition via development of charter schools. (Ed.
28 Code § 47600 et seq.) Charter schools operate under terms of their charter granted by a chartering

1 authority, i.e., district, county office, or State Board of Education. In exchange for autonomy from
2 school rules and bureaucracy, charter schools are required to meet specific goals for student
3 achievement as a basis for continued existence. (Ed. Code § 47601(f).) If they fail to meet certain
4 goals, their charter can be revoked. (Ed. Code § 47607.)

5
6 New charter schools must have a physical location to operate. Such "start up" charters may
7 propose new sites within the school district from which to operate as long as those sites are identified
8 in the charter petition. Multiple sites can be identified in the petition. It must be signed by at least
9 one-half of the parents or guardians of pupils estimated to enroll and one-half of the number of
10 teachers estimated to be employed during its first year of operation. (§ 47605(a) (1).)

11
12 "Conversion charters" are different from "start up" charters because they propose to convert an
13 existing public school into a charter school. The petition must be signed by at least 50% of the
14 permanent status teachers currently employed at the public school to be converted. It can then be
15 submitted for review to the school district. (Ed. Code § 47605(a)(2).) An existing public school
16 converting partially or entirely to a charter school must adopt and maintain a policy giving admission
17 preference to pupils who reside within the former attendance area of that public school. (Ed. Code §
18 47605(d)(1).)

19
20 Petitioner argues that the above distinction logically implies that conversion charters are
21 intended to be located at the existing school site from which they sprang. It also points to fundamental
22 differences in the mechanisms for funding conversion and start up charters which, it is argued, assume
23 location of conversion charters at the existing site. Conversion charters are to receive funding at the
24 same level received by the pre-existing public school in the year prior to the conversion. (Ed. Code §
25 47660 (b).) Consequently, they are specifically excluded from two main sources of funding available
26 to start up charters: the Charter School Revolving Loan Fund (Ed. Code § 41365(b)) and the Charter
27 School Facility Grant Program. (Ed. Code § 47614.5 (d) (2).) Thus, Petitioners argue, a conversion
28 charter's funding is tied directly to the converted school site.

1 In response, the District points to Proposition 39 (Ed. Code § 47614), which was passed
2 specifically to address issues concerning the obligations of school districts with respect to the
3 allocation of facilities to charter schools. (See (2005) *Ridgecrest Charter School v. Sierra Sands*
4 *Unified School Dist.* 130 Cal.App.4th 986, 1001.) Making no express distinction between start up and
5 conversion charters, the pertinent parts of the statute require only that the district: 1) provide facilities
6 reasonably equivalent to those available to other district students, and 2) make reasonable efforts to
7 provide facilities at or near where the charter desires to locate. The District contrasts this language
8 with Ed. Code § 52055.5 (b)(3)(B) which provides that, in a setting not applicable here, the State
9 Board of Education "shall...establish the charter at the existing school site." The point being that such
10 language could easily have been incorporated into Proposition 39 if that was the true intent.

11
12 The tipping point in the Court's analysis comes from the regulations adopted by the State
13 Board of Education implementing Proposition 39, or, more precisely, the Final Statement of Reasons
14 in support of those regulations. Proposition 39 specifically directs the State Department of Education
15 to propose regulations implementing the statute, which the State Board of Education may adopt. (Ed.
16 Code § 47614 (b)(6).) Among the regulations adopted was 5 Cal. Code Regs. § 11969.3, defining the
17 statutory term "facilities reasonably equivalent." The provisions which expressly address conversion
18 charters (5 Cal. Code Regs. § 11969.3 (c)(2) & (d).) state only that "the facility previously used by the
19 school district at the site shall be considered to be reasonably equivalent."

20
21 This still begs the question of whether the district is *required* to make that site available to the
22 charter for its first year of operation. However, the Final Statement of Reasons, issued in connection
23 with the regulatory adoption of 5 Cal. Code Regs. § 11969.1 - 11969.9, is much clearer. It states:

24
25 "The proposed regulations already allow charter schools created by conversion to
26 retain their original sites by annual request, because the charter ties the school to a
27 specific site." (pp.10, 12)

1 "[t]he clear intent of the statutory scheme is for a charter school established by a
2 conversion to remain at its existing location and serve the same attendance area as existed
3 at the time of the conversion.... "(p. 15)
4

5 In the course of regulatory adoption, the "final statement of reasons" updates the "initial
6 statement of reasons," which states "the specific purpose of each adoption ... and the rationale for the
7 determination by the agency that each adoption ... is reasonably necessary to carry out the purpose for
8 which it is proposed." (Ibid.; Gov.Code, § 11346.2, subd. (b)(1).) As a general matter, courts "will be
9 deferential to government agency interpretations of their own regulations, particularly when the
10 interpretation involves matters within the agency's expertise and does not plainly conflict with a
11 statutory mandate. (See (1998) *Yamaha Corp. of America v. State Board of Equalization* 19 Cal.4th 1,
12 12-13, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) ... [W]e will not disturb the agency's determination without a
13 demonstration that it is clearly unreasonable." (*Environmental Protection & Information Center v.*
14 *California Department of Forestry & Fire Protection*, supra, 44 Cal.4th at p.490, 80 Cal.Rptr.3d 28,
15 187 P.3d 888.) While final responsibility for interpreting a statute or regulation rests with the courts
16 and a court will not accept an agency interpretation that is clearly erroneous or unreasonable, "[a]s a
17 general rule, the courts defer to the agency charged with enforcing a regulation when interpreting a
18 regulation because the agency possesses expertise in the subject area." (See (2009) *Exxon Mobil*
19 *Corp. v. Office of Environmental Health Hazard Assessment* 169 Cal. App. 4th 1264, 1282.)
20

21 The Court finds that the above-quoted provisions of the Final Statement of Reasons do not
22 plainly conflict with the relevant statutes, nor is the State Board's interpretation erroneous or
23 unreasonable. On the contrary, it aids greatly in harmonizing what would otherwise be inconsistent or
24 inconsequential statutory language. For the above stated reasons, the Court adopts this interpretation.
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1 CONCLUSION

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3 For the above stated reasons, the petition shall be granted and judgment entered in favor of
4 Petitioner directing the issuance of a peremptory writ of mandate ordering Respondents to: 1) comply
5 with Proposition 39 and its Implementing Regulations, 2) allocate the Meadows site to MATES for the
6 2009-2010 school year, and 3) immediately cease and desist from taking any action inconsistent with
7 the foregoing. Petitioner's requests for injunctive relief and attorney fees are denied. Petitioner shall
8 recover costs.

9
10 Petitioner is directed to prepare a proposed judgment consistent with this ruling and a proposed
11 peremptory writ of mandate consistent with the judgment, submit them to opposing counsel for
12 approval as to form, and thereafter submit them to the Court for execution and entry of judgment.

13
14 The clerk shall give notice of this ruling.

15
16
17 DATED: 5-11-09

18 
19 DAVID R. WORLEY
20 JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

CASE NO. 56-2009-00336393-CU-WM-SIM

I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a party to the above-entitled action. My business address is 3855-F Alamo Street, Simi Valley, CA 93063. On May 12, 2009, I served the following document described as:

Ruling On Petition for Writ of Mandate

By placing a true copy thereof for collection and mailing so as to cause it to be mailed on the above date, following standard court practices, in sealed envelopes addressed as follows:

**Paul C Minney
7 Parkcenter Drive
Sacramento, CA 94105**

**Andrew G Minney
7 Parkcenter Drive
Sacramento CA 95825**

**Sarah L.W. Sutherland
750 B Street, Suite 2310
San Diego, CA 92101**

**John R Yeh
71 Stevenson Street, Nineteenth Floor
San Francisco, CA 94105**

I am readily familiar with the County's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service and/or interoffice mail on that same day with postage thereon fully prepaid at Simi Valley, California in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated and executed at Simi Valley, California on May 12, 2009.

MICHAEL D. PLANET,
Executive Officer and Clerk

By: _____
Judicial Assistant

Declaration of Mailing