

San Bernardino County Superior Court  
1455 Civic Center Drive  
Victorville, CA 92392

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
VICTORVILLE DISTRICT  
JUL 18 2012  
BY Patricia A. Gillette  
PATRICIA A. GILLETTE, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN BERNARDINO

DOREEN DIAZ, KATHY DUNCAN, ) TERESA  
ROGERS, OLIVIA ZAMARRIPA, ) BARTOLA  
DEL VILLAR, )

Petitioners, )  
)  
)

vs. )  
)

ADELANTO SCHOOL DISTRICT; )  
ADELANTO DISTRICT BOARD OF )  
TRUSTEES, )  
)

Respondents. )  
)

CASE NO: CIVVS 1201650

ORDER GRANTING PETITIONERS'  
PETITION FOR WRIT OF MANDATE

On May 11, 2012, hearing and oral argument were held regarding Petitioners' petition for writ of mandate. The Petitioners are challenging the Adelanto School District and Adelanto School District Board of Trustees' February 21, 2012 decision to reject a petition to change Desert Trails Elementary School into a charter school. Attorneys Mark Holscher and Elizabeth Kim represent Petitioners Doreen Diaz, Kathy Duncan, Teresa Rogers, Olivia Zamarripa, and Bartola Del Villar (Petitioners). Attorney Barrett Green and Michelle Holmes represent Respondents Adelanto School District (District), and Adelanto School District Board of Trustees (Trustees). After taking the matter under submission, the court issues the following order granting the petition for writ of mandate.

## I. Background

Education Code, § 53300 *et. seq.* is known as the "Parent Trigger Law." This statute empowers parents of children who attend the persistently lowest achieving schools to take corrective action. California Code of Regulations, § 4800 *et. seq.* sets forth the implementing provisions for the Trigger Law. Under Education Code § 53300, parents of students attending under-performing schools may sign a petition seeking to require the local school district to implement an educational intervention at the school. One of the intervention options is to convert the failing school into a charter school. § 53300 states that when a combination of at least half of the parents or legal guardians of the pupils attending the school sign a petition requesting the local education agency implement one or more of the four available corrective actions, including the charter school option, the local education agency shall implement the corrective action requested by the parents or legal guardians.

In the present case, Desert Trails Elementary School in Adelanto, California has been classified as a failing school by the State of California for the last six years. The school ranked last out of all elementary schools in the Adelanto School District. According to state test results, 72% of sixth graders are not proficient in English-language arts and 70% of sixth graders are not proficient in math. Annual statistics are decreasing instead of improving. A group of parents who have children attending Desert Trails Elementary School sought assistance from a non-profit organization known as "Parent Revolution" which is based in Los Angeles. Parent Revolution had previously tried to invoke the Parent Trigger Law to convert McKinley Elementary School in Compton into a charter school. The Compton Unified School District denied the petition for lack of a date box on the form. The Los Angeles Superior Court upheld the District's Denial of the petition finding that the denial was based on substantial evidence and was not arbitrary or capricious. With Parent Revolution's assistance, a group of Adelanto parents sought to invoke the Parent Trigger Law to change Desert Trails Elementary School into a charter school. . With the

assistance of Parent Revolution, these parents entered a written agreement to organize an Adelanto chapter of Parent Revolution known as "Desert Trails Parent Union."

A signature gathering effort was undertaken to submit petitions to the District to invoke the Parent Trigger Law. Training sessions were held by members of the Parent Revolution who had participated in an earlier unsuccessful effort in Compton. Great efforts were made to properly train signature gathers and to attempt to avoid any accusations of misinformation, intimidation, or harassment. Seven parents were trained in how to verbally explain the petitions and pass out documents that were captioned "Desert Trails Parent Union" stating the purpose of the petitions in English and Spanish. The persons collecting signatures on the petition wore t-shirts stating "Desert Trails Parent Union." They also wore name tags with words "Desert Trails Parent Union Signature Gatherer" on them. Parents and legal guardians of students were canvassed and asked to sign two separate petitions. The first petition contained a list of demands and improvements to be made at the school.<sup>1</sup> The second petition was to convert the school into a charter school. Over a period of six weeks, the surrounding neighborhoods of Desert Trails Elementary School were canvassed to gather signatures from parents of attending students. On January 12, 2012, the District received the second petition with 466 signatures seeking to convert Desert Trails Elementary School into a charter school. As of January 12, 2012, Desert Trails Elementary School had 666 students enrolled. As of that date, 466 signatures equaled 70% of the students enrolled at Desert Trails Elementary School, well above the minimum 50% required to invoke the mandatory duty imposed by statute upon the District to convert the school into a Charter School.

In response to the petition, the District held a Board Meeting on February 21, 2012. At the February 12, 2012 hearing, the District made several findings. As a result of these findings, the District

<sup>1</sup> A series of meetings were held between parents and Adelanto School District Superintendent Darin Brawley and Assistant Superintendent Ross Swearington. During the meetings, parents made several requests regarding improvement of education at Desert Trails Elementary School. Superintendent Brawley and Assistant Superintendent Swearington informed the parents that all the demands could not be met without severely impacting the educational outcomes of other school sites. The District denied all of the parents' requests.

recommended that 218 signatures on the petition should not be counted thereby reducing the percentage to 37%. The District's recommendations were adopted by the Trustees and the petition was rejected and returned.

Findings at School Board Meeting held on February 21, 2012

On February 21, 2012, the Adelanto School District issued recommendations identified as Findings (A) through (I) regarding the Desert Trails Elementary School petition. Each of those findings were approved by the Board of Trustees.

Finding (A) concluded that as of January 12, 2012, a total of 666 students were actively enrolled at Desert Trails Elementary School. The District found that total number of students whom signatures were received with the petition was 466. However, as set out in findings (B) through (I), the District and the Board of Trustees found that 218 signatures should not be counted toward the petition for the following reasons:

Finding (B): The District and Board found that the petition contained signatures for 24 students who were not enrolled at the school.

Finding (C): Petition signature pages for 3 students lacked a signature, date, and school name. Finding (D): Petition signature pages were submitted for 5 students where the signing person is not listed as an authorized educational rights holder of the student.

Finding (E): The District and Board rejected 25 signatures because "signatures were not contained within the student records" for comparison.

Finding (F): The District and the Board rejected 97 signatures because the District "received a number of requests from parents who assert that they signed the petition under false pretenses, misunderstood the Petition, or otherwise signed the petition in error."

Finding (G): The District and Board rejected 5 signatures because parents of five students advised the District they did not sign the petition.

Finding (H): The District rejected 43 signatures because the signature pages for students contained the following errors or omissions: wrong or missing birthdate, error in student name, inaccurate grade level, and inconsistent spelling of parent name.

Finding (I): The District rejected 16 signatures because the signatures were submitted on "English Petitions" but the student files reflected that school-related documents be provided in Spanish.

Based on these findings, the percentage of signatures of parents or legal guardians of the enrolled students was reduced from 70% to only 37%. The Board approved the District's recommendation, denied the petition, and returned it to the Petitioners.

#### Findings at School Board Meeting held on March 28, 2012

After the initial petition was rejected, the District received a resubmission of the petition on March 6, 2012. The District undertook an effort to contact parents and legal guardians of students and made additional findings as a result. Regarding the 25 signatures that were rejected because no comparative signature was on file, the District obtained 8 verified signatures for comparison and counted them as valid. Regarding the 43 signatures rejected due to miscellaneous errors such as wrong or missing birthdate, or inconsistent spelling of parent or guardian's name, the District permitted 37 to be deemed valid because they were in "substantial compliance." After further contact of those parents or guardians who the District had received revocations, the District concluded that some of the parents or guardians had reaffirmed their support for the petition. However, the District and Board found that there were 70 remaining revocations. The District and Board concluded that the number of signatures remained at less than 50%.

The District and Board also raised for the first time an objection to the failure to display "Desert Trails Parent Union" on the front page of the petition citing failure to comply with Regulation § 4802 (a) (10). For the second time, the Board approved the District's recommendation, denied the Petition, and returned it to the petitioners.

On April 5, 2012, a verified petition for writ of mandate was filed in the San Bernardino County Superior Court seeking the following relief against the Adelanto School District and the Adelanto School District Board of Trustees:

(1) Rescind the Adelanto School District Board of Trustees' February 21, 2012 rejection of 25 petitions on the basis that the District could not find a comparative signature in its files (Finding (E) above);

- (2) Rescind the Adelanto School District Board of Trustee's February 21, 2012 acceptance of 97 revocation forms (Finding (F) above);
- (3) Rescind the Adelanto School District Board of Trustee's March 28, 2012 action returning the petition;
- (4) Allow Petitioners to immediately begin the process of soliciting and selecting charter school proposals.

## II. Discussion

Code of Civil Procedure, Section 1085 allows the court to compel the performance of a duty that is purely ministerial in character. *Ridgecrest Charter School v. Sierra Sands Unified School District* (2005) 130 Cal.App.4th 986, 1002. The remedy may not be invoked to control an exercise in discretion, i.e., to compel an official to exercise discretion in a particular way. *Id.* at 1002. A ministerial act has been described as an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his or her own judgment or opinion concerning the act's propriety or impropriety, when a given set of facts exist. *Id.* at 1002. Education Code § 53300 states that when a combination of at least half of the parents or legal guardians of the pupils attending the school sign a petition requesting the local education agency implement corrective action, the local education agency shall implement the corrective action requested by the parents or legal guardians. Since § 53300 states a local school 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 of 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 District employees or classroom teachers.

- a. The District and Trustees improperly refused to accept 97 signatures considered to be revocations.

After receipt of the petition, the District undertook various measures as outlined in findings "B" through "I" regarding verification of signatures. One of the measures undertaken by the District was set forth in Finding (F) which was the invalidation of 97 signatures on the petition because revocation forms were received after the date of submission of the petition. The Trustees adopted the District's finding.

In reviewing a petition for writ of mandate seeking to compel an official to perform a mandatory duty, the court first determines the scope of the official's discretion and secondly, whether the official abused its discretion under the circumstances of the case. *Ridgecrest Charter School v. Sierra Sands Unified School District* (2005), *supra*, at 997. Regulation § 4801 (g) expressly disfavors the revocation of signatures on a Parent Trigger Petition. § 4801 (g) states: "... parents and legal guardians of eligible pupils shall be free from ... being encouraged to revoke their signature on a petition." Regulation § 4802.1 (f) also expressly limits the scope of the District's duty when reviewing a petition to verification of signatures on the petition and nothing more. § 4802.1 subsection (f) states that (the District) may only contact parents or legal guardians to verify eligible signatures on the petition. (Underline added.) Nowhere within Regulation 4800 *et. seg.* or Education Code § 53300 *et. seg.* is any authority given to the District to invalidate signatures after the date the petition is submitted on the grounds that the person signing the petition has subsequently revoked their signature. Doing so is contrary to the express intent of the drafters as set forth in § 4801 (g) disfavoring revocations. The District's efforts in this case went beyond a determination of whether parents did in fact sign the petition. The revocation forms themselves contain an acknowledgement that the parent or guardian signed the originally submitted petition. The District's decision to not count these 97 signatures of parents or legal guardians who acknowledge that they signed the petition exceeds the scope of authority expressly declared in the Regulations. Therefore, the court finds the District and Trustees decision not to count these 97 signatures amounts to an abuse of discretion.

In *Alliance For A Better Downtown Millbrae v. Wade* (2003) 108 Cal. App.d<sup>4</sup> 123, the city clerk refused to certify a petition based on extrinsic evidence relating to the manner of circulation of the petition. The Court held that the city clerk had no such authority and that the election official's role in certifying a petition is confined to the ministerial task of examining the four corners of the petition for compliance with submission requirements. Petitioners argue that by refusing to count 97 signatures on the petition towards the 50% requirement, the District did precisely what the clerk did in *Millbrae*, that is,

went beyond the four corners of the petition and relied on extrinsic evidence to attempt to determine the state of mind of the signers after the petition was submitted for the purpose of invalidating the petition.

The District makes an argument that signatures on petitions can be revoked at any time by relying upon a sentence contained within the Final Statement of Reasons published prior to the enactment of the Regulations. During the public comment period prior to the enactment of these specific Regulations, current District counsel Barrett Green submitted several comments seeking changes to the proposed regulations which were published in the "Final Statement of Reasons" relating to the enactment of the Regulations. In particular, Mr. Green asked the drafters in writing prior to the enactment to withdraw proposed Regulation § 4802.I(h).

That section reads as follows:

If the LEA (Local Education Authority) finds sufficient signatures cannot be verified by the LEA it shall immediately notify the lead petitioner contacts and provide the lead petitioner the names of those parents and legal guardians it cannot verify. The lead petitioner contacts shall be provided 60 calendar days to assist the LEA to verify the signatures. A number of methods may be used, including, but not limited to, an official notarization process or having the parent or guardian appear at the school or district office.

During the public comment period Mr. Green submitted the following comment seeking to have the above section withdrawn:

Comment: (By Barret Green) When a petition is submitted, the petition reflects the views of the signatories at a "snapshot" in time - the moment of submission of the proposal. These views may change at some point thereafter. Allowing a defective petition to be revived would seem to endorse an assumption that a petitioner, who at one period in time supported the petition, still supports the petition at some later point. It is reasonable to require that the proponents only submit petitions after undertaking reasonable due diligence to ensure they have obtained the requisite number of signatures. It is respectfully proposed that Regulation 4802.1 (h) be withdrawn.

California Department of Education Staff Response: Reject. Nothing in these regulations precludes a parent/guardian from withdrawing his/her signature from a petition at any time.

Regulation §4802.1(h) sought to be removed by Mr. Green is not directly relevant to the issues presently before the court. The staff was directing its comments to his request to withdraw §4802.1 (h).

In this case, the court is guided by the express wording of the enacted Regulations, i.e. §4801 (g) which states " ... parents and legal guardians of eligible pupils shall be free from ... being encouraged to revoke their signature on a petition." To use the staff comments for authority that signatures may be withdrawn at any time is direct contrast to the actual enacted wording of the Regulations disfavoring revocations. In determining legislative intent, the courts are guided by the actual wording used in the text of the statute or regulation.

The Petitioners ask the court to reject the District's interpretation that signatures once placed on the petition and submitted to the District may be later withdrawn. Petitioners argue that otherwise, the District and opponents would be permitted to continually run rescission drives after a petition has been accepted and a school had been started to force children to return the failed school. The court does not interpret the enacted statute and regulations as allowing signatures to be withdrawn at any time. The actual text and wording of the enacted regulations continually refer to the date the petition is submitted as the triggering date. Once the petition was submitted, the District and the Trustees lacked authority to reject 97 signatures from the petition based on subsequent extrinsic evidence of recession. The District's sole duty was to verify whether the signatures were placed there by parents or guardians of students attending the school. Since the revocation forms themselves contained an acknowledgement that the parent or guardian signed the petition that was submitted, the District and Trustees have a mandatory legislative duty to include those signatures. The inclusion of these 97 signatures raises the number of qualified signatures to greater than 50%.

- b. The District and Trustees did not abuse their discretion in rejecting those signatures for which there were no comparative signatures.

The court also addresses the issue of whether the District abused its discretion in rejecting 25 signatures for which no comparative signature was on file. This was addressed by the District in its Finding (E). §4802.1 allows the District to return a petition if one half of the parents or legal guardians have not signed the petition. §4802.1 specifically states that the District may use documents that contain parent or guardian signatures to verify the petition signatures. As stated in Finding (E), the District attempted to compare these 25 signatures to school records but could not find any comparative signatures. §4802.1 (h) states that if the District cannot verify signatures, it shall

notify the lead petitioner contact of the names of those parents and legal guardians it cannot verify. The District did provide the student numbers for the 25 signatures under this category to the Petitioners' lead contact. The regulation states the lead petitioner contacts may then provide other sources of verification to the District including but not limited to official notarization or having the parent or guardian appear at the school or district office. After notifying the lead contact person for the petitioner, 8 of the 25 persons in this category were verified to have signed the petition. Under this regulatory scheme the District has the discretion to return the petition if the lead contacts do not provide additional information to assist the District in signature verification. Under the facts and circumstances of this case, the District's decision to not count the remaining 17 signatures that could not be compared to existing signatures on file is expressly authorized by the regulations and therefore is not an abuse of discretion. However, this conclusion does not defeat the petition for writ of mandate because with the inclusion of the 97 signatures improperly rejected by the District under Finding (F), there are more than enough signatures to meet the 50% threshold.

c. The failure to place the name "Desert Trail Parent Union" on the face of the petition.

The final issue addressed is the District's argument that the name "Desert Trail Parent Union" did not appear on the front page of the petition forms submitted to the District. § 4802 addresses the content of the petition. §4802 (a) (10) states the front of the petition shall contain the names of any agencies or organizations that are supporting the petition, either through direct financial assistance or in kind contributions of staff and volunteer support.

The District cites *Assembly v. Deukmejian* (1982) 30 Cal. 3d 638 and argues the Supreme Court has held that "substantial compliance means actual compliance in respect to the substance essential to every reasonable objective of the statute." The District argues that since the name Desert Trails Parent Union was not listed on the petition, there was "complete noncompliance with a required element" and therefore the petition was properly denied on this basis.

Petitioners argue that their substantial compliance with § 4802 should save the petition. The court in *Hayward Area Planning Association v. Superior Court* (1990) 218 Cal.App.3d 53, 57 described the doctrine of substantial compliance:

It has long been our judicial policy to apply a liberal construction to (the) power (of the initiative and referendum) whenever it is challenged in order that the right be not improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it. (Citations.) However, where the petition deficiencies threaten the proper operation of the election process, refusal to file the petition has been judicially upheld. (Citations.) Although such statutes should be liberally construed to permit the exercise by the electors of this 1110st important privilege, the statutes designed to protect the elector from confusing or misleading information should be enforced so as to guarantee the integrity of the process. (Citations.) Consequently, "substantial compliance means ... actual compliance in respect to the substance essential to every reasonable objective of the statute. (Citation). In other words, technical deficiencies in referendum petitions will not invalidate the petitions **if** they substantially comply with statutory and constitutional requirements, for a paramount concern in determining whether a petition is valid despite an alleged defect is whether the purpose of the technical requirement is frustrated by the defective form of the petition." (Citations.)

*Hayward, supra*, at 57 (emphasis added.)

The court looks at each set of facts and circumstances to determine whether any technical deficiency frustrates the proper operation of the election process and protects the public from confusing or misleading information. In *Assembly v. Deukmejian, supra*, relied upon by the District, a petition to re-draw voting district lines asked the petition signer to provide his or her "address as registered to vote" rather than residence address. Without the petition signer's current address on the petition, it was impossible for the clerk of the registrar of voters to determine whether the signer was a qualified registered voter. *Id* at 647. In that instance, the technical deficiency did frustrate the proper operation of the election process.

As referenced above, Parent Revolution had unsuccessfully attempted to convert McKinley Elementary School in Compton into a charter school. The Compton Unified School District denied the petition for lack of a date box on the form. The Los Angeles Superior Court upheld the District's Denial of the petition. In order denying the petition supplied to this court by the District, the trial court explained that the date is essential to determine whether the parent had education authority over the student on the date the parent signed the petition. Again the failure to comply with the date requirement frustrated the proper operation of the petition process.

In contrast, *Hayward, supra*, dealt with the following set of Circumstances. The Hayward City Council approved a resolution to allow residential and commercial development ofWalpert Ridge. A number of residents circulated a referendum petition requesting the City Council repeal the resolution

to develop Walpert Ridge. The city clerk certified that the petition contained the required number of valid signatures to be placed on the ballot at upcoming municipal elections. Hayward Inc., a developer, filed a petition for writ of mandate in the Superior Court seeking to invalidate the clerk's certification of the referendum for the upcoming election. Hayward Inc. claimed the Election Code § 4052 required the title at the top of the referendum petition to read "Referendum Against Ordinance Passed by the City Council." The top of the subject petition instead read "To the City Council of Hayward." The Superior Court granted Hayward Inc.'s writ of mandate. The Court of Appeal ordered the Superior Court to vacate its order granting the petition and to enter a new order denying the petition. The Court of Appeal found that under the circumstances of the case, there was no confusion regarding the contents of the referendum petition despite the technical deficiency in the title. The Court held that the doctrine of substantial compliance should not be rejected simply because there is no title across the top of the petition. *Id.* at 58. Under those facts, the improper caption at the top of the referendum petition did not frustrate the political process because the actual caption did not confuse or mislead voters.

In the present case, the parents who canvassed the neighborhood gathering signatures wore t-shirts with the name "Desert Trails Parent Union" on them. These signature gathers also wore name tags labeled "Desert Trails Parent Union Signature Gather" when they spoke to other parents and guardians. The signature gathers also passed out written documents in English and Spanish explaining that the petition was organized by Desert Trails Parent Union. These documents were passed out to parents and guardians when the petition was explained to them. Under these facts, consistent with Hayward, *supra*, the court finds that the listing of "Parent Revolution" only on the face of the petition and the omission of "Desert Trails Parent Union: did not result in petition signers from being confused or mislead.

Nor was there any confusion upon the District as to whether Desert Trails Parent Union was initiating the petition effort. The District and lead contacts for the Desert Trails Parent Union exchanged correspondence and had multiple meetings discussing the petition. Not until March 23, 2012 in the last paragraph of a letter from the District to organization leader Doreen Diaz did the District raise any objection to the failure to list their name on the front of the petition. The lack of Desert Trails Parent Union's name on the face under the facts of this case did was not misleading or cause confusion.

Accordingly the omission of the name on the face of the petition did not frustrate the purpose of the petition process under Regulations §4800 *et. seg.* and Education Code §53300 *et. seg.*

CONCLUSION

For the reasons set forth above, the Court grants Petitioners' writ of mandate.

IT IS ORDERED THAT the Adelanto School District and the Adelanto Board of Trustees shall:

1. Within 30 calendar days of the date below, rescind the Adelanto School District and the Adelanto School District Board of Trustees' February 21,2012 acceptance of 97 unauthorized rescission forms; AND
2. Within 30 calendar days of the date below, rescind the action of the Adelanto School District and the Adelanto School District Board of Trustees' February 21, 2012 and March 28,2012 that returned the Parent Trigger Petition; AND
3. The Adelanto School District and the Adelanto School District Board of Trustees' shall allow the Petitioners to immediately begin the process of soliciting and selecting charter school proposals.

Dated: July 18,2012

*By: ~·I(IJ~*

Steve Malone

Judge of the San Bernardino Superior Court