

New West Charter Middle School v.
LAUSD
BS 115979

Tentative decision on motion to enforce
writ: granted

FILED
Superior Court of California
County of Los Angeles

NOV 21 2008

John A. Clarke, Executive Officer/Clerk
By A. Sajardo, Deputy
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Petitioner New West Charter Middle School ("New West") seeks an order to enforce the writ of mandamus issued by the court, compelling Respondent Los Angeles Unified School District ("LAUSD") to comply with its non-discretionary duties under Education Code section 47614 to provide reasonably equivalent school facilities. The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

A. Statement of the Case

New West commenced this proceeding on July 21, 2008, seeking to compel LAUSD to fulfill a mandatory obligation to provide its facilities to New West under Education Code §47614 and Proposition 39, enacted in November 2000.

B. Applicable Law

The court that issues a writ of mandate retains continuing jurisdiction to make any order necessary to its enforcement. CCP §§1097, 1105; County of Inyo v. City of Los Angeles, (1977) 71 Cal.App.3d 185, 205; *see also*, Professional Engineers in Cal. Govt. v. State Personnel Bd., (1980) 114 Cal.App.3d 101, 109. This authority is codified in California Code of Civil Procedure section 1097, which provides, in part, that when a peremptory writ has issued and is disobeyed, the court "... may make any orders necessary and proper for the complete enforcement of the writ," but it is also an inherent power of the court. Kings v. Woods, (1983) 144 Cal. App.3d 571, 578.

Where the Writ remands the matter to Board with directions to proceed in a certain manner, and Board's Return states that the Court's mandate has been carried out, a petitioner may challenge the validity of that claim. CCP §1097. The petitioner may make either an oral or written motion requesting the court order the respondent to reconsider the writ further, or the court may make such a motion *sua sponte*. County of Inyo, supra, 71 Cal. App. 3d at 188.

C. Analysis¹

On September 5, 2008, the court granted New West's Petition. On October 3, 2008, the Court issued its Writ of Mandate. LAUSD was ordered to fulfill its Proposition 39 duty, and its offer to New West for the facilities offered at Fairfax High or other acceptable location for the school year 2008-09 in compliance with Education Code section 47614 and its implementing regulations. The court ordered LAUSD "to fulfill its Proposition 39 duty," and ruled that "New West's right to equitably share facilities is mandatory, even if it might cause some 'disruption and dislocation' of district students."

LAUSD was required to provide space for 284 middle school students that was "reasonably equivalent" to the facilities it provides its "own" middle school students at "comparison schools" selected in accordance with the Implementing Regulations.

¹New West's request for oral testimony is denied.

1. Proximity to the Requested Area

LAUSD is required "to make reasonable efforts to provide the charter school with facilities near to where the charter school wishes to locate." Ed. Code §47614(b). New West's October 1, 2007 Request for Proposition 39 Facilities stated that its student population comes from the neighborhoods surrounding LAUSD's Local District 7. The Request also sought "any potential sites" located in an area bounded by Century Blvd. (LAX) to the south, Sunset Blvd. to the north, Pacific Coast Highway to the west, and La Cienega to the east."

LAUSD officials assigned New West to Logan Elementary. This location is in Local District 7. While it is some 15 miles from New West's present school location, the school's present location is not the site for which LAUSD must endeavor to provide reasonably proximate space. Rather, it is the location of New West's students, and they are indisputably in Local District 7. LAUSD could comply with its obligations by providing space in District 7 or near New West's school in District 3.

2. Group Comparison

LAUSD had a duty to offer New West facilities reasonably equivalent to those the students would be in if attending other public schools of the district. Ed. Code §47614(b). This offer should be made based on comparison group of schools under Proposition 39. Ed. Code §47614(b); 5 Cal. Code Regs. §11969.3(a). A comparison is necessary because the facilities proposed must be reasonably equivalent (in both capacity and condition) to the middle school facilities enjoyed by students in the LAUSD schools that New West's students would otherwise attend. Ed. Code §47614(b); 5 Cal. Code Regs. §11969.3(a).

The first task to be performed is to identify the comparison group. "The comparison group shall be the school-district operated schools with similar grade levels [i.e. middle schools] that serve students living in the high school attendance area ... in which the largest number of students of the charter school reside." 5 Cal. Code Regs. §11969.3(a)(2).

The comparison group may be determined from New West's October 2007 application, which stated that "the student population of up to 600 students will come from the surrounding neighborhoods of Local District 7."

New West points out that the Request included hundreds of student applications indicating where the students reside, and the vast majority come from District 3. Specifically, the applications included a form with the following line: "[P]lease list the school within the District your son/daughter would otherwise attend." The high school attendance area where the largest number of students of New West's 312 students reside is University High School (121 New West students reside in that area), located in District 3.² The next largest group of New West students live in the attendance areas for Venice High School, Hamilton High School, and Palisades High School, in that descending order. All of these schools are in District 3. New West states that it intended to draw students from South Los Angeles, but has not received many letters of intent from that region.

The discrepancy perhaps lies in New West's projection of the South Los Angeles

²Apparently, the school facilities are generally inferior in District 7 to those in District 3.

location from which "up to 600 students will come" and the actual location of New West's 312 students. In any event, LAUSD is entitled to rely on New West's own statements about the location of its students and for the comparison group of middle schools, which are "Bethune, Drew, Edison, Compers, Markham and Muir Middle School." It was not required to add up the information in the student forms attached to the application.

However, LAUSD did not perform a comparison group analysis for District 7 middle schools. Instead, it simply investigated whether there were contiguous classrooms available at any location in South Los Angeles and in the alternative area of District 3. This "investigation" consisted of LAUSD's declarant, Ana Teresa Fernandez ("Fernandez"), asking unnamed "colleagues" whether they knew of any school site with 13 empty classrooms. This "investigation" identified Logan Elementary, located in an unknown District, which became available only because another charter school declined it in September. On October 6, 2008, LAUSD issued what it called an "offer" of space to New West at Logan Elementary School.

This effort does not meet the standards prescribed by Ed. Code section 47614(b) and the implementing regulations. Nor is it consistent with the court's order. LAUSD contends that Logan Elementary is the only set of contiguous classrooms in west central Los Angeles available to accommodate New West's 285 students. Based on availability, LAUSD contends that a comparison of a group of schools in District 7 was not required. It contends that it cannot "kick students out of school to accommodate New West in the middle of the school year."

LAUSD does not recognize that the reason why a serious disruption of students and teachers could even be necessary in the middle of the school year is because of its own failure to accommodate New West by providing the Fairfax space it promised. LAUSD should hardly be entitled to benefit from its wrongdoing. While students and teachers may be the innocent victims, some disruption and dislocation must be tolerated if necessary to provide a reasonable provision of space to New West. While a major disruption is not required, LAUSD did not even investigate the availability of space that could require some disruption of another school. For example, a school like Fairfax may have to forego a particular teaching program in order to accommodate New West. It simply is not enough to state that Logan Elementary is the only unused space in LAUSD.

3. Compliance with the Law and the Writ

If Logan Elementary is in a location in District 7 or near New West's school in District 3, and if it meets the requirements that a comparison of middle schools in that District would provide, then it does not matter whether LAUSD performed a truncated analysis.

It is neither. Logan Elementary is in District 4. New West also says that the space offered does not meet the requirements of a comparable middle school. On October 13, 2008, after repeated requests by the principal of New West, LAUSD allowed New West representatives to see the space available at Logan Elementary School. The disparity between the district-operated elementary school classrooms, library, computer lab, multi-purpose auditorium, and cafeteria area, and the bare classrooms and facilities offered to New West was stark. LAUSD staff explained that New West's middle schools students would have no access to any library, computer lab, multi-purpose auditorium, or cafeteria areas. New West's designated student "eating area" was outdoors and barely separated by a wall from LAUSD's garbage dumpsters, which have a bad odor.

LAUSD disputes these facts. Fernandez says that during the site visit to Logan Elementary she offered use of the library, computer lab, multi-purpose auditorium, cafeteria, teacher lounge, and playgrounds, and assured New West that this use would be accommodated and coordinated with Logan Elementary's principal. She states that the facilities offered are reasonably equivalent to, and far exceed, those available to middle school students in South Los Angeles.

In reply, New West's Principal, Sharon Weir ("Weir"), states that she was told by Fernandez and the Logan Elementary principal that the auditorium was not available for New West because another charter school was sharing it with Logan, the cafeteria was not available to New West because Logan students used it all day and New West would have to use old wooden tables abutting a trash area. New West would not be allowed to use the teacher's lounge or an unused grassy area for physical education. New West could not use the staff parking garage and its teachers would have to park on the street. New West could use a blacktop area only when Logan was not using it, which was most of the day. All of the portable classrooms were in poor condition, with broken windows, not working air conditioning, and damaged ceilings and doors. New West's students could not use larger in-building bathrooms, and would have to use the bathrooms in the portable classrooms designed for very small children and porta-potties for larger children and adults.

Quite simply, LAUSD's claim that any extensive shared use of facilities was offered during the site visit is not believable. Nothing in the written offer indicates the availability of these teaching amenities. The October 6 says nothing about shared space. Facilities such as a library, computer lab, auditorium, and cafeteria would necessarily have to be shared. Given the deception that has marked LAUSD's conduct towards New West, its contention is not credible.

Given that the court accepts the truth of Weir's declaration, the facilities which were offered at Logan Elementary could not possibly meet the requirements that a comparison of middle schools in that District would provide. LAUSD is correct that New West has not provided any evidence of what that comparison would show. However, LAUSD was obligated to perform the comparison, and has not done so. The facilities offered are not an equal sharing with Logan Elementary students, and the fair inference is that they would not meet the requirements of a comparison of District 7 middle schools.

D. Conclusion

LAUSD has not complied with its legal obligations by providing an adequate offer of space in District 7 or District 3 based on a comparison group analysis of facilities in District 7. LAUSD's obligations under Proposition 39 run from school year to school year. LAUSD has delayed meeting its mandatory duty by more than six months. The motion to enforce the writ is granted.

As a remedy, New West asks for immediate compliance or in the alternative its actual damages for LAUSD's failure to comply with its April 1, 2008 offer. "If judgment be given for the applicant, the applicant may recover the damages which the applicant has sustained... as may be determined by the court..." CCP § 1095. "Damages may appropriately be awarded in mandamus proceedings." Warner v. North Orange County Community College District, (1979) 99 Cal.App.3d 617, 628. It appears that immediate compliance may not be feasible. If New West wishes to pursue damages in lieu of compliance, the court will require additional briefing

