YOUNG, MINNEY & CORR, LLP
PAUL C. MINNEY, SBN 166989
WILLIAM J. TRINKLE, SBN 102280
SARAH J. KOLLMAN, SBN 244314
J. SCOTT SMITH, SBN 151163
WENDY A. WALKER, SBN 295877
655 University Ave. Suite 150
Sacramento, CA 95825
Telephone: (916) 646-1400
Facsimile: (916) 646-1300

Attorneys for Plaintiff
ROCKETSHIP EDUCATION

Exempt from Filing Fees
Gov. Code §6103

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

ROCKETSHIP EDUCATION, a California corporation, dba ROCKETSHIP FUTURO ACADEMY,

Petitioner and Plaintiff,

v.

MT. DIABLO UNIFIED SCHOOL DISTRICT and DOES 1 through 10, inclusive,

Respondents and Defendants.

CASE NO.: N17-0137

~~[PROPOSED]~~ JUDGMENT GRANTING WRIT OF MANDATE

[Assigned for All Purposes to the Honorable Judith Craddick, Dept. 9]

Date: March 8, 2017
Time: 9:00 a.m.
Dept.: 9

Petition filed: January 30, 2017

On March 8, 2017, in Department 9 of the above-entitled Court, the Honorable Judith Craddick presiding, this matter came for hearing on the Petition for Writ of Mandate and Complaint filed by Petitioner and Plaintiff ROCKETSHIP EDUCATION, a California corporation, dba ROCKETSHIP FUTURO ACADEMY ("ROCKETSHIP" or "Petitioner") against Respondents and Defendants, MT. DIABLO UNIFIED SCHOOL DISTRICT, a California public school district ("DISTRICT" or "Respondent") and Does 1 though 10, inclusive (collectively "Respondents"). Sarah J. Kollman, Esq. and J. Scott Smith, Esq. of Young, Minney & Corr LLP appeared on behalf of Petitioner; John R. Yeh, Esq. of Burke, Williams & Sorensen, LLP appeared on behalf of the Respondents.

Evidence having been presented by all parties, the cause having been argued and submitted for decision on March 8, 2017, the Court adopted its Tentative Ruling on the same date with clarification that the District must offer not only reasonably equivalent classroom facilities but also reasonably

equivalent specialized classroom facilities and non-teaching station space. A true and correct copy of the Tentative Ruling is attached hereto as **Exhibit A** and is incorporated herein.

After considering the papers and all other matters presented to the Court and with good cause existing, judgment is hereby entered in favor of Petitioner and Plaintiff ROCKETSHIP EDUCATION, dba ROCKETSHIP FUTURO ACADEMY, and against Respondents and Defendants, MT. DIABLO UNIFIED SCHOOL DISTRICT. IT IS ORDERED, ADJUDGED, AND DECREED that:

1. Petitioner's Petition for Writ of Mandate is GRANTED IN PART.

2. A writ of mandate hereby issues, commanding DISTRICT to do the following:

   a. By no later than March 17, 2017, the District shall comply with Proposition 39 and its Implementing Regulations, and make a written, reasonably equivalent and contiguous preliminary proposal of facilities that meets the criteria of Education Code Section 47614(b) (which shall include classroom facilities as well as specialized classroom facilities and non-teaching station space) to ROCKETSHIP for the 2017-2018 school year to accommodate ROCKETSHIP's projected in-District average daily attendance of 285.

   b. This relief is intended to be prohibitory in nature in that it prohibits the DISTRICT from basing its facilities offer on a projected in-District Average Daily attendance of any less than 285.

   c. No later than March 27, 2017, ROCKETSHIP shall respond to the DISTRICT's preliminary proposal in writing, expressing any concerns, addressing differences between the preliminary proposal and ROCKETSHIP's facilities request, and/or making counter proposals.

   d. No later than April 3, 2017, the DISTRICT shall make a written final offer of reasonably equivalent and contiguous facilities that meets the criteria of Education Code Section 47614(b) (which shall include classroom facilities as well as specialized classroom facilities and non-teaching station space) to accommodate ROCKETSHIP's projected in-District average daily attendance of 285 ("Final Offer").

YOUNG, MINNEY & CORR, LLP
655 UNIVERSITY AVENUE, SUITE 150
SACRAMENTO, CA 95825

e. No later than May 1, 2017, ROCKETSHIP shall accept or decline the DISTRICT's Final Offer.

f. The deadlines provided for herein are adjusted dates for compliance with Prop. 39 deadlines, resulting from the delays of the standard process which are specifically addressed in this proceeding.

g. The DISTRICT shall immediately cease and desist from taking any action inconsistent with the attached ruling of this Court.

3. The Court shall exercise continuing jurisdiction over this action to ensure that Respondents comply with this judgment and writ of mandate.

Dated: 3-8-17

Hon. Judith Craddick
Judge of the Superior Court

YOUNG, MINNEY & CORR, LLP
655 University Avenue
Suite 150
Sacramento, CA 95825

CONTRA COSTA SUPERIOR COURT

MARTINEZ, CALIFORNIA
DEPARTMENT: 09
HEARING DATE: 03/08/17

21. TIME: 9:00 CASE#: MSN17-0137
CASE NAME: ROCKETSHIP VS. MT DIABLO
HEARING ON PETITION FOR WRIT OF MANDATE
FILED BY ROCKETSHIP EDUCATION
TENTATIVE RULING:

The petition for writ of mandate, brought by Rocketship Education ("Rocketship"), is granted in part. Respondent Mt. Diablo Unified School District ("the District") is hereby enjoined to offer Rocketship, for the 2017-2018 school year, classroom facilities adequate to accommodate Rocketship's projected in-district average daily attendance of 285 students. (Petition, Exh. 6, page 18.) Such facilities shall meet the statutorily specified criteria. (Ed. Code, § 47614, subd. (b).)

The Court issues no relief concerning alleged parent intimidation, although this aspect of the Court's ruling is without prejudice to Rocketship or third parties pursuing such relief in a separate civil action. The Court makes no finding as to costs or attorney fees, which may be claimed through standard post-judgment procedures.

Rocketship shall prepare a proposed judgment in its favor, and shall provide the District's counsel with a copy for approval as to form prior to the hearing. Of particular concern is the timeline for the offer and acceptance of adequate facilities, so that the classroom allocation process can get back on track. Due to the urgency of the situation, the Court intends to enter a judgment on or before Friday March 10.

The basis for the Court's ruling on the petition is as follows.

A. Standard of Review.

Rocketship has filed a petition for a writ of ordinary mandate pursuant to section 1085 of the Code of Civil Procedure. It is not a petition for a writ of administrative mandate brought pursuant to section 1094.5. This has implications for both sides.

First, the governing standard of review is abuse of discretion: Rocketship must show that the District's conduct was "arbitrary" or "capricious." (*Sequoia Union High School Dist. v. Aurora Charter High School* (2003) 112 Cal.App.4th 185, 195.) Second, the doctrine of "exhaustion of administrative remedies" does not apply. (*City of Coachella v. Riverside County Airport Land Use Com.* (1989) 210 Cal.App.3d 1277, 1287 ["the doctrine does not apply in those situations where no specific administrative remedies are available to the plaintiff"].) An interpretation of the Proposition 39 implementing regulations that required charter schools to wait until after April 1 to pursue Superior Court and appellate review would be unreasonable, given the need to plan for the upcoming school year. (See, Calvo Dec., filed on 2-6-17, *passim*.)

B. Procedural Issues.

1. The District's Motion.

Exhibit A

The District has filed a special motion to strike under section 425.16 of the Code of Civil Procedure, but has made no attempt to advance the hearing on that motion to the hearing on the merits of the petition. Because the Court is now ruling on the merits of the petition, the District's motion to strike is dropped from calendar as moot.

The Court further notes that the Court would not have been inclined to grant the District's motion on the merits in any event: Rocketship's allegations concerning parent intimidation are ancillary to the main thrust of Rocketship's argument and the main relief sought. There are no allegations concerning parent intimidation set out in the body of Rocketship's mandate cause of action. (Petition, ¶¶ 59-66.) Rather, as the District correctly observes in its evidentiary objections, the methodology of the District's counter-projection is "the central issue in this matter." (Objections, filed on 2-14-17, page 2, lines 13-14.)

2. Declaratory Relief.

The Court is granting relief pursuant to the First Cause of Action, which is Rocketship's petition for a writ of mandate. This renders moot the Second Cause of Action, Rocketship's complaint for declaratory relief: the Court declines to issue superfluous declarations. (See, Code Civ. Proc., § 1061; *Hood v. Superior Court* (1995) 33 Cal.App.4th 319, 324 [no need for declaratory relief when issues "were fully engaged by other causes of action"]. See also, *General of America Ins. Co. v. Lilly* (1968) 258 Cal.App.2d 465, 470.)

3. Documents Filed Under Seal.

The Court has already ordered that the opening documents filed by Rocketship conditionally under seal are now finally sealed. (Order, filed on 2-1-17, page 2, ¶ 2.) For good cause shown, the Court hereby orders that the opposition documents filed by the District conditionally under seal are also now finally sealed. This aspect of the Court's ruling is subject to further order of the Court following a noticed motion, should any party with standing contend that the sealing orders are too broad.

C. Evidentiary Issues.

1. The District's Objections.

The District's evidentiary objections, filed on February 14, 2017, are sustained on both grounds stated. The declarations of Alice Gonzalez and Miguel Soza are irrelevant, because the District's purported acts of parent intimidation are ancillary to the main thrust of Rocketship's argument and the main relief sought in the petition; as the District correctly observes, the methodology of the District's counter-projection is "the central issue in this matter." Also, the allegations to which the District objects constitute hearsay for which no hearsay exception has been established.

2. Rocketship's Objections.

The Court rules as follows on Rocketship's evidentiary objections, filed on February 17, 2017.

Declaration of John R. Yeh. ¶¶ 1-5 and 10-11, overruled: Mr. Yeh has personal knowledge of purely procedural developments in his capacity as the District's lawyer; the allegations are at least marginally relevant as background; and in any event these facts are not genuinely disputed. **¶ 7**, sustained as to the language "the Charter School's in-District classroom ADA turned out to be only 101.65": Mr. Yeh has not established personal knowledge of this purported fact, but instead refers only to the District's unverified letter of December 1. **¶ 8**, sustained: Mr. Yeh has not established personal knowledge of these purported facts, but instead refers only to the District's board resolution — a resolution subsequently overturned by the State Board of Education. **¶ 9**, sustained: Mr. Yeh has not established personal knowledge of this purported fact, but instead refers only to a website printout.

Supplemental Declaration of John R. Yeh. ¶ 1, sustained on all grounds stated except relevance. This ruling obviously also applies to the supplemental declaration's Exhibit 1.

Declaration of Tim Cody. ¶ 4, overruled: the Court regards this as a hyper-technical objection to a procedural fact not genuinely disputed. **¶¶ 5-7**, sustained on all grounds stated except relevance. The substantive allegations of this mystifying declaration set forth no competent opinions, whether the declaration is viewed as that of a lay witness or an expert witness. The Court has no idea what a "Director of Measure C" may be, what information Mr. Cody relied on, and what experience and methodology Mr. Cody used to form the opinions he sets forth as if they were self-evident facts.

The Script Declarations. Rocketship's objections to the declarations of Carmen Garces, Carmen Lopez, Laura Matsuzaki, and Sofia Soto are overruled in part.

¶¶4. Insofar as these declarations are being used to explain the methodology the District used when compiling statistical data for answers to the four questions set out in the subject script, the objection is overruled — without any finding that the methodology is valid. The objection is sustained as to the declarants' assertions that certain telephone numbers were "wrong, or did not work": these allegations are impermissibly conclusory, unintelligibly vague, and represent unsupported opinions. Finally, insofar as the call logs record parent statements other than direct responses to the four script questions, the objection is sustained on the same grounds cited by the District in its own objections: relevance, and hearsay.

¶¶ 5. Overruled. The declarants may competently allege that they did not speak in a threatening or harassing manner: this is a permissible lay opinion. The vagueness of this language goes to its weight, and not its admissibility.

D. The Merits.

1. Enrollment v. ADA.

The Court is not persuaded that the phraseology of the December 1 counter-projection supports issuing a writ of mandate. There are three reasons why this is so.

First, a fair reading of the December 1 counter-projection strongly suggests that the District was in fact referring to in-district ADA, and not to enrollment, particularly when the specific language of the counter-projection is read in context with the analytical language preceding it. (Petition, Exh. 2, p. 6.) The District does not expressly state that it is referring to enrollment; this appears to be a case of poor wording.

Second, Rocketship has failed to explain how any technical error in this regard was prejudicial. Rocketship was able to evaluate the counter-projection and provide its own revised projection in Rocketship's January 2 response.

Finally, it would appear to the Court that any error in using an enrollment number rather than an ADA number would have favored Rocketship. Presumably, enrollment is always higher than ADA. Had the District used an ADA number, it would have offered even less classroom space.

The Court notes that it would seem prudent for the District to use the correct phraseology in future school years.

2. The District's Counter-Projection.

The Court is persuaded by Rocketship's opening and reply arguments that the District's December 1 counter-projection is otherwise wholly invalid, without regard to its wording, and so represents an abuse of discretion. (Ed. Code, § 47614, subd.(b)(2) ["[t]he district shall allocate facilities to the charter school for that following year based upon [the charter school's reasonable] projection"].) Given the absence of a valid counter-projection, Rocketship's revised projection is "no longer subject to challenge," and the District has a ministerial duty to accept Rocketship's January 2 revised projection for the 2017-2018 school year. (Cal. Code Reg. tit. 5, § 11969.9, subd. (d).) The projection process stops as of January 2, and the District must immediately move on to provide suitable classroom facilities. This finding is made on two independent grounds.

The Permissible Scope of Review

The regulations implementing Proposition 39 provide that a district shall "review" the projection submitted by a charter school to ensure that the projection is reasonable. (Cal. Code Reg. tit. 5, § 11969.9, subd. (d).) The regulations do not authorize a district to blithely discard the school's methodology and documentation by conducting its own wholly independent counter-survey.

The Court finds that the scope of "review" permitted to a school district is very limited. The district may review the charter school's projection for obvious defects, such as listing a child outside the qualifying age range, listing a child who resides outside the district's boundaries, etc. The district may also review whether the school's documentation reasonably supports the school's projection.

In the case at bar, the District went far beyond the scope of such permissible review. The District launched a forensic attack on Rocketship's documentation with the obvious intent

and predictable effect of minimizing the amount of classroom space the District would offer Rocketship.

Interpreting the implementing regulations to provide a narrow scope of review is bolstered by a consideration of the parties' respective incentives. Charter schools have a strong incentive *not* to overestimate enrollment, because they must pay for empty classroom space. (Ed. Code, § 47614, subd. (b)(2); Cal. Code Regs., tit. 5, § 11969.8. See, *Sequoia Union High School Dist. v. Aurora Charter High School* (2003) 112 Cal.App.4th 185, 196 ["the school is subsequently penalized if its projection was incorrect by having to reimburse the district for over-allocated space"].) Hostile school districts, on the other hand, have every incentive to underestimate enrollment because they face no countervailing financial penalty. The regulations cannot be interpreted so as to give school districts *carte blanche* to lowball projected enrollment, thereby starving potentially viable charter schools of the classroom facilities they need to grow and thrive. Proposition 39 was enacted to prevent such conduct, and not to enable it.

The *Environmental Charter* decision cited by the District is easily distinguishable. (See, *Environmental Charter High School v. Centinela Valley Union High School Dist.* (2004) 122 Cal.App.4th 139.) The decision held that "there is nothing in the regulations that requires a school district to accept and consider a facilities request that is incomplete and wholly lacking." (*Id.*, at 153.) Rocketship's November 1 request cannot fairly be so characterized.

The District's Counter-Survey

Even if an independent counter-survey were permissible, the counter-survey conducted by the District is so deeply flawed that relying on it was a gross abuse of discretion. (Petition, ¶¶ 40-47 and Exhibit 6.) The Court is particularly struck by the number of parents who would lose the opportunity to enroll their children in a charter school merely because — through a completely opaque methodology — four District employees determined that the phone numbers listed for them were "wrong." (See, Petition, ¶ 43 and Exhibit 6.) Rocketship's critique of the counter-survey is compelling.

A related point is the lack of any evidence that the District's counter-survey was designed and implemented by District employees who knew what they were doing. A charter school may be presumed to know its business, and even without such a presumption, Rocketship's officer Cheye Calvo has established her qualifications. (Calvo Dec., filed on 2-6-17, ¶ 1.) The District, on the other hand, apparently has virtually no experience with charter schools — other than waging its legal battle against Rocketship's very existence.

Who is Ms. Calvo's counterpart at the District? We may assume that Ms. Garces, Ms. Lopez, Ms. Matsuzaki, and Ms. Soto did not compose the script and design the counter-survey themselves. Was this done by the District's lawyers, with a view to positioning the District for future litigation? The Court notes that, while the District's December 1 letter is on District stationery, and is signed by the District's superintendent, the first sentence of the letter reads as follows: "This law firm represents the Mt. Diablo Unified School District ..." (Yeh Dec., Exh. "B".) Was the survey designed and supervised by Tim Cody, a District employee with the enigmatic title "Director of Measure C"? Mr. Cody does not say so. (Cody Dec., *passim.*)

Paragraph 7 of Mr. Cody's declaration has been found inadmissible on multiple grounds, and is so vague and conclusory that it would not have been of benefit to the Court even if it had been found admissible.

As a final point, the Court emphasizes that it has not relied on any direct or inferential evidence of parent intimidation in making this ruling. Even in the absence of any intimidation, the counter-survey conducted by the District is so deeply flawed that relying on it was a gross abuse of discretion.

3. The District's Rhetoric.

The Court is dismayed by the District's assertion that Rocketship has made "false and fraudulent misrepresentations." (Opposition, filed on 2-14-17, page 1, lines 23-16. See also, page 10, line 10 [the subject forms "were fraudulently induced"]; page 14, lines 3-5 ["[t]he Charter School has attempted to conceal the submission of fraudulently-induced documentation"].) The District's reckless assertion is particularly troubling because it is based entirely on the same kind of inadmissible hearsay statements that the District itself has properly objected to. (Objections, filed on 2-14-17. See also, Opposition, part III-A-4, pages 10-11.)

The Court finds that there is not a scintilla of admissible evidence suggesting that Rocketship engaged in any form of fraudulent conduct. (See also, Declaration of Cheye Calvo, filed on 2-17-17, *passim*.) Rocketship has demonstrated its good faith in all respects, including Rocketship's decision to submit a substantially revised projection on January 2, despite a plausible legal basis for arguing that the District was required to accept Rocketship's higher projection of November 1.