

FILED

FEB 07 2014

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY: *[Signature]* DEPUTY
M. Chaney

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

SAN JOSE UNIFIED SCHOOL DISTRICT,

Plaintiff,

v.

SANTA CLARA COUNTY BOARD OF
EDUCATION, et al.,

Defendants.

Case No. 1-13-CV-241695

STATEMENT OF DECISION

Consolidated with Case No.
1-13-CV-241932

I. PROCEDURAL BACKGROUND.¹

This case commenced on February 22, 2013, when San Jose Unified School District sued the Santa Clara County Office of Education and Rocketship Eight Charter School seeking a writ of mandate to stop the Santa Clara County Board of Education and the Santa Clara County Office of Education from granting the Rocketship, an independent public charter school "... an exemption from the City of San Jose zoning requirements ..." that would allow Rocketship charter school to go forward with its plans for 1197 Lick Avenue, San Jose. Specifically, San Jose Unified School District ("SJUSD") seeks a writ to set aside Resolution 2112-1, passed on

¹ The Court has carefully considered the objections to its October 7, 2013 Proposed Statement of Decision and the request for an amended statement of decision pursuant to Rule 3.1550(d). The Court has also given considerable thought to the arguments presented on January 19, 2014.

1 January 23, 2013 by the County Board of Education with a five-to-one vote and, specifically
2 applying to 1197 Lick Avenue (“the Property”) which happens to be within the geographical
3 boundaries of SJUSD. (Writ ¶ 21, p. 5:1-3.)

4 The County Board asserts that it has the power to override local zoning ordinances based
5 on Government Code § 53094(b).

6 This case asked the Court to determine whether the Santa Clara County Board of
7 Education ought to be deemed a “school district” and allowed to exercise the powers contained
8 in Government Code § 53094(b).

9 The issue arises out of the intertwined purposes of the California Constitution, the
10 Education Code, and the Government Code. As with so many legal issues, history is important
11 in understanding the legal context.

12 **Brief History of California Government Code § 53094(b) and the Interrelationship with the**
13 **California Constitution and the California Education Code**

14 The original California State Constitution of 1849 was adopted before California’s actual
15 admission to the union as a state. The 1849 Constitution, which was, to some degree, modeled
16 on the earlier Michigan State Constitution specifically addressed the issue of education in
17 Article IX.

18 Article IX specifically required that a “superintendent of public instruction” be elected in
19 the year 1863 (Article IX, Section 1); “The Legislature shall encourage, by all suitable means,
20 the promotion of intellectual, scientific, moral and agricultural improvement.” (Article IX,
21 Section 2.) Article IX, Section 2 went on to provide a scheme by which public lands would be
22 sold to pay for the school system.

23 Article III of Section 9 mandated, “The Legislature shall provide for a system of common
24 schools, by which a school shall be kept up and supported in each district at least three months in
25 every year; ...” (Article IX, Section 3).

26 Over the following years, the Legislature enacted much legislation relating to education
27 and the present Deering’s California Codes for education encompass twelve volumes and cover
28 approximately 17-1/2 to 18 inches of bookshelf space.

1 On April 22, 1955, a contractor was hired by the Taft Union High School District and
2 Junior College District to construct a new school building at a cost of \$614,113. The plans and
3 specifications for the building were approved by the State Department of Education and the State
4 Division of Architecture. However, the City of Taft “stopped” the project, insisting it was
5 entitled to a building permit fee of \$300. *Hall v. City of Taft* (1956) 47 Cal.2d 177 at page 179.

6 The City’s action ultimately led to the California Supreme Court declaring:

7 “The public schools of this state are a matter of statewide rather
8 than local or municipal concern; their establishment, regulation and
9 operation are covered by the Constitution and the state Legislature
is given comprehensive powers in relation thereto.”

10 *Hall v. City of Taft* (1956) 47 Cal.2d 177 at page 179.

11 The Supreme Court went on to write at page 180:

12 “No money shall ever be appropriated for ‘any school not under the
13 exclusive control of the officers of the public schools ...’ [citation]
14 ‘the Legislature shall have power, by general law, to provide for the
15 incorporation and organization of school districts, high school
16 districts, and junior college districts, of every kind and class, and
17 may classify such districts.’ [citations] In harmony with those
18 provisions, it has been held that the power of the state legislature
19 over the public schools is plenary, subject only to any constitutional
20 restrictions. [citations] The public school system is of statewide
21 supervision and concern and legislative enactments thereon control
22 over attempted regulation by local government units. [citations] ‘It
23 [the education of the children of the state] is in a sense exclusively
the function of the state which cannot be delegated to any other
agency. The education of children of the state is an obligation
which the state took over to itself by the adoption of the
Constitution. ... School districts are agencies of the state for the
local operation of the state school system. [citations] The beneficial
ownership of property of the public schools is in the state.’”

24 After making a comprehensive analysis of public education in California, the California
25 State Supreme Court concluded that under the “rights of sovereignty,” neither the City of Taft,
26 nor any other local or municipal agency, was entitled to override the building decisions of a
27 school district.

28 That decision was followed two years later by the Court of Appeal decision in *Town of*

1 *Atherton v. Superior Court of San Mateo County (Menlo Park School District Real Party in*
2 *Interest)*, 159 Cal.App.2d 417, which specifically addressed the following questions:

3 “Do the zoning ordinances of a municipality control the right of a
4 school district in which the municipality is included, to designate
5 the location of its schools? Corollary to this are the questions (a) Is
6 a school district a state agency? (b) If so, has the state occupied the
7 field of location of schools?”

8 The Court of Appeal found that the Supreme Court had “... flatly answered” that school
9 districts were state agencies. The Court went on to answer the second question as follows at
10 page 422: “The answer is that the state has occupied the field.”

11 As discussed in the case of *City of Santa Cruz v. Santa Cruz City School Board of*
12 *Education* (1989) 210 Cal.App.3d 1:

13 “The broad language in *Taft* appeared to immunize all state
14 agencies from local regulatory control, and created potential
15 problems for local governments, as well as the state, which
16 suddenly had to assume regulatory and supervisory responsibilities
17 previously shouldered by local governments. Consequently, the
18 Legislature, in effect, consented to local regulation by adopting
19 Article 5, ‘Regulation of local agencies by counties and cities’ in
20 chapter 1, Title 5 of the Government Code, sections 53090 through
21 53095.”

22 “The Legislature has since fine-tuned this balance. In 1965 it
23 amended the former Section 53094 to preclude exemptions for off-
24 site ‘non-classroom facilities,’ that is, ‘when such non-classroom
25 facilities will not be located upon, or adjacent to, or contiguous to
26 land used for classroom facilities.’ [citation] In 1976, the
27 Legislature completely eliminated this off-site qualification ...”

28 The *Santa Cruz* decision was followed in 1990 by the case of *The People Ex Rel. Edward*
29 *J. Cooper v. Rancho Santiago College* (1990) 226 Cal.App.3d 1281. That case specifically
30 found that the college could not override local zoning for non-educational purposes (i.e., a swap
31 meet in the college parking lot).

32 As acknowledged in appellate decisions, the underlying purpose of Government Code
33 § 53094 is to allow school districts, including community college districts, to exempt themselves

1 from specific local zoning ordinances where a unique instructional function is facilitated. See
2 also *City of Santa Clara v. Santa Clara Unified School District* (1971) 22 Cal.App.3d 152.

3
4 **II. GUIDELINES FOR STATUTORY INTERPRETATION.**

5 A good review of the principles of statutory construction can be found in *Apartment*
6 *Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2009) 173 Cal.App.4th 13 at pp. 21-22.

7 There, the Court stated:

8 “The fundamental task of statutory construction is to ‘ascertain the
9 intent of the lawmakers so as to effectuate the purpose of the law.
10 [Citations.] In order to determine this intent, we begin by examining
11 the language of the statute.’ [Citation.] The words of a statute are to
12 be interpreted in the sense in which they would have been
understood at the time of the enactment.” (*People v. Cruz* (1996) 13
Cal.4th 764, 774–775 [55 Cal. Rptr. 2d 117, 919 P.2d 731].)

13 ““The meaning of a statute may not be determined from a single
14 word or sentence; the words must be construed in context, and
15 provisions relating to the same subject matter must be harmonized
16 to the extent possible. [Citation.] Literal construction should not
17 prevail if it is contrary to the legislative intent apparent in the
18 statute. ... An interpretation that renders related provisions nugatory
19 must be avoided [citation]” (*People v. Shabazz* (2006) 38
20 Cal.4th 55, 67–68 [40 Cal. Rptr. 3d 750, 130 P.3d 519].)

21 Where ... the plain meaning of a statute is insufficient to resolve a
22 question of interpretation, we may review the legislative history of
23 the statute and the wider historical circumstances of its enactment,
24 as well as the public policy underlying the law. (*Absher v.*
25 *AutoZone, Inc.* (2008) 164 Cal.App.4th 332, 340 [78 Cal. Rptr. 3d
26 817].) “If two seemingly inconsistent statutes conflict, the court's
27 role is to harmonize the law. [Citations.] We presume that the
28 Legislature, when enacting a statute, was aware of existing related
laws and intended to maintain a consistent body of rules.” (*Stone*
Street Capital, LLC v. California State Lottery Com. (2008) 165
Cal.App.4th 109, 118 [80 Cal. Rptr. 3d 326] (*Stone Street*); see also
Dyna-Med, Inc. v. Fair Employment & Housing Com. (1987) 43
Cal.3d 1379, 1387 [241 Cal. Rptr. 67, 743 P.2d 1323] [“statutes or
statutory sections relating to the same subject must be harmonized,
both internally and with each other, to the extent possible”]; *Drouet*
v. Superior Court (2003) 31 Cal.4th 583, 593 [3 Cal. Rptr. 3d 205,
73 P.3d 1185] (*Drouet*) [when two statutes regarding the same

1 subject matter appear in conflict, the court's task is to harmonize the
2 statutes].)

3 “One ‘elementary rule’ of statutory construction is that statutes in
4 *pari materia*—that is, statutes relating to the same subject matter—
5 should be construed together. [Citation.] ... The rule of in *pari*
6 *materia* is a corollary of the principle that the goal of statutory
7 interpretation is to determine legislative intent.” (*Droeger v.*
8 *Friedman, Sloan & Ross* (1991) 54 Cal.3d 26, 50–51 [283 Cal.
9 Rptr. 584, 812 P.2d 931].)

10 “If inconsistent statutes cannot otherwise be reconciled, ‘a
11 particular or specific provision will take precedence over a
12 conflicting general provision.’ [Citations.] The Supreme Court has
13 confirmed, “‘where the general statute standing alone would include
14 the same matter as the special act, and thus conflict with it, the
15 special act will be considered as an exception to the general statute
16 whether it was passed before or after such general enactment.
17 [Citations.]’” (*People v. Gilbert* (1969) 1 Cal.3d 475, 479 [82 Cal.
18 Rptr. 724, 462 P.2d 580].)” (*Stone Street, supra*, 165 Cal.App.4th at
19 p. 119.)

20 “Generally, we will presume that the enactment of a statute does not
21 impliedly repeal existing statutes. (*Garcia v. McCutchen* (1997) 16
22 Cal.4th 469, 476 [66 Cal. Rptr. 2d 319, 940 P.2d 906] (*Garcia*).)
23 ‘Absent an express declaration of legislative intent, we will find an
24 implied repeal ‘only when there is no rational basis for harmonizing
25 the two potentially conflicting statutes [citation], and the statutes
26 are “irreconcilable, clearly repugnant, and so inconsistent that the
27 two cannot have concurrent operation.’” (*Id.* at p. 477.)

28 **III. HISTORY OF CHARTER SCHOOLS IN CALIFORNIA.**

29 In 1992, the California Legislature enacted the Charter School Act, which specifically
30 envisions a competitive system in which charter schools will compete with school districts for
31 the same students. The assumption is that such competition will enhance education generally.²

32 Charter schools may be chartered by local school districts, such as SJUSD or by county
33 boards of education. In this particular case, charter school Rocketship Eight has elected to be

34 ² The Court will not comment on the wisdom of the legislative enactment, as that is not the
35 Court’s function. The Court does, however, note that funding in this context is a zero-sum game.
36 It should not surprise anyone that conflicts will arise between charter schools and public schools
37 in this funding context.

1 chartered by the County Board of Education, even though other Rocketship charter schools have
2 been chartered by San Jose Unified School District.

3 If SJUSD had elected to pass the Government Code § 53094(b) resolution overriding
4 local San Jose zoning for the benefit of Rocketship Eight, that decision would be beyond
5 question because the law clearly vests school districts with that power.

6 The real issue presented in this case is whether the Legislature intended by the enactment
7 of Government Code § 53094(b) to endow the County Board of Education with the same power
8 to override local zoning that it endowed “school districts.”

9 This is a question of legislative interpretation.

10
11 **IV. CONCLUSIONS.**

12 After reviewing the legislation and historical background to the legislation, this Court has
13 come to the following conclusions:

- 14 1. A school district is a public organization authorized by the Legislature with a defined
15 territory and subordinate to the general education laws of the State of California. It is
16 vested with various powers by the Legislature, which include local taxation, and,
17 pursuant to Government Code § 53094(b), the power under specific circumstances to
18 override local zoning ordinances. This power has been granted to school districts
19 because of their unique instructional functions. Within its defined geographical area,
20 a school district is required to educate all children of appropriate grade and age,
21 provide all necessary classroom facilities, teachers and instructional materials. The
22 concept of school district clearly encompasses the idea of mass public education.

23 As noted in the California Supreme Court decision of *Today's Fresh Start, Inc. v. Los*
24 *Angeles County Office of Education* (July 11, 2013), 57 Cal.4th 197 at 218-219:

25 “County Boards do not operate public schools (see generally
26 §§ 1040-1047), though they are in some instances the governing
27 boards for schools operated by county offices of education (e.g.,
28 § 52310.5 subd. (c)). In turn, the school’s county offices run are not
for the general student population, but instead, offer specialized
vocational or technical training or educate specialty groups,

1 including students who are homeless, on probation, in juvenile
2 halls, and have been expelled from other schools.”

3 As noted in Exhibit 42,³ a document from the Los Angeles County Office of Education,
4 the duties of the County Board of Education are focused on supervision of school district
5 budgets, the needs of special pupils, dealing with inter-district pupil transfers, and a variety of
6 other county programs, such as vocational education centers, expelled students, etc. The County
7 Board of Education has the same right to establish charter schools as any school district and may
8 grant a charter, where appropriate on appeal, after refusal by a school district.⁴

9 In short, while some of the duties of the school district and the County Board of
10 Education overlap, a school district is tasked with generally different responsibilities than a
11 county board. The County Board of Education does not have the unique educational task of
12 mass public education that a school district has.

12 **Standing Questions**

13 The issue of standing was addressed by our Supreme Court in *Save the Plastic Bag*
14 *Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 165, 166. Following that analysis,
15 this Court is satisfied that both Petitioners Brett Bymaster and San Jose Unified School District
16 have legal standing to bring these actions.

17 **Specific Analysis of Government Code § 53094(b) – Power of School District to Render** 18 **Zoning Ordinances Inapplicable**

19 This Court is satisfied that the Legislature intended to provide this extraordinary power to
20 override local zoning only to “school districts and junior college boards” and not to local county
21 offices of education. This Court comes to this conclusion for the following reasons:

- 22 1. The plain language of section 53094 uses only the words “school district.” The Court
23

24 ³ The Court has taken judicial notice of all exhibits. The parties have requested the Court to take
25 judicial notice of a total of 67 exhibits.

26 ⁴ A county board of education may approve a charter school application directly to serve students
27 served by the county board of education. (Ed. Code § 47605.5) And since 2002, a county board
28 of education has the right to approve in the first instance (without rejection by a school district)
county-wide charter schools that will directly compete with the traditional kindergarten through
twelfth grade programs provided by school districts. (Ed. Code § 47605.6)

1 believes the plain language of the statute must control;

- 2 2. The legislative history following the state Supreme Court decisions in *Hall v. City of*
3 *Taft* (1956) 47 Cal.2d 177 and *Town of Atherton v. Menlo Park School District* (1958)
4 159 Cal.App.2d 417 clearly relates to building issues involving “school districts.”
- 5 3. While county boards of education are deemed to be school districts in certain
6 circumstances and, for limited purposes, the Legislature has not equated county
7 boards of education and “school districts” for all purposes.

8 County boards of education generally do not fulfill the same unique mass educational
9 functions which are the duty of school districts. In short, there is such sufficient difference
10 between what a county board of education does and what a normal “school district” does that this
11 Court believes that if the Legislature had intended to grant the power to override local zoning to
12 county boards of education, the Legislature would have so stated.⁵ It has not done so.

13 **Disposition**

14 The Court will grant the requested writ of mandate.^{6 7} Counsel for San Jose Unified
15

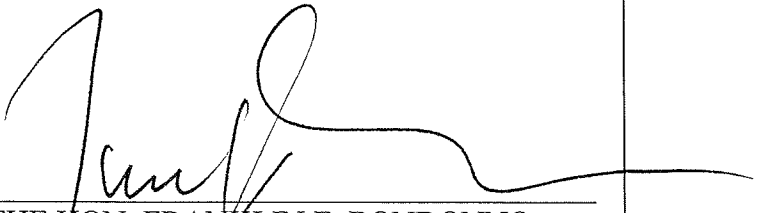
16 ⁵ The Court notes that the California Education Code § 35160.1 is a very specific finding by the
17 Legislature acknowledging the existence of school districts, county boards of education, and
18 county superintendents of schools, and noting that there are “... common as well as unique”
19 needs. Section (b) specifically notes, “... it is the intent of the Legislature to give school
20 districts, county boards of education, and county superintendents of school boards authority to
21 carry on activities and programs, including the expenditure of funds for programs and activities
22 which, in the determination of the governing board of the school district, the County Board of
23 Education, or the County Superintendent of Schools are necessary or desirable in meeting their
24 needs and are not inconsistent with the purposes for which the funds are appropriated.

25 ⁶ At the hearing on this writ, the Court specifically asked counsel for Rocketship Charter School
26 why it was necessary to seek this resolution from the County Board of Education in light of the
27 very positive indications from the City of San Jose Planning Department that they would be
28 agreeable to the necessary zoning changes for the proposed school. The answer was that this
procedure was faster.

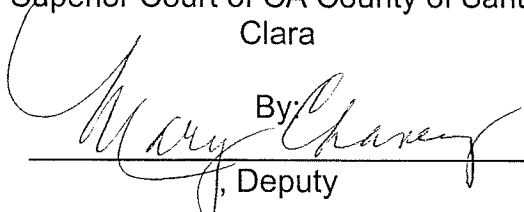
29 While it may have appeared to Rocketship to be the only way to open a school for the
30 2013-2014 school year, this Court does not believe that such expediency justifies a judicial
31 rewriting of the Government Code. Certainly, the Legislature is free, if it so chooses, to grant
32 these extraordinary powers to render zoning ordinances inapplicable to local county boards of
33 education. In this Court’s opinion, that is a classic example of a legislative function.

1 School District is directed to submit a proposed writ for signature within the 15 days following
2 the filing of this Statement of Decision.

3
4 Dated: March 7, 2014

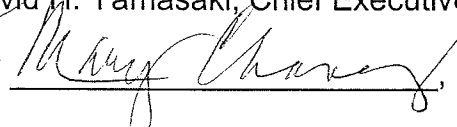
5 
6 THE HON. FRANKLIN E. BONDONNO
7 Judge of the Superior Court

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24 ⁷ As noted by Justice Baxter: “The Charter School Act (CSA; Ed. Code § 47600 et seq.), as
25 adopted by the Legislature in 1992 and since amended, represents a revolutionary change in the
26 concept of public education. Under this statute, interested persons may obtain charters to operate
27 schools that function within public school districts, accept all eligible students, charge no tuition,
28 and are financed by state and local tax dollars, but nonetheless retain considerable academic
independence from the mainstream public education system. Such schools may elect to operate
as, or be operated by, corporations organized under the Nonprofit Public Benefit Corporation
Law.”

<p style="text-align: center;">SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA</p>	<p style="text-align: center;">FILED Date: <u>3/17/14</u> DAVID H. YAMASAKI Chief Executive Officer Clerk Superior Court of CA County of Santa Clara</p>
<p>Plaintiff: SAN JOSE UNIFIED SCHOOL DISTRICT</p>	<p style="text-align: center;">By:  _____ Deputy</p>
<p>Defendant: SANTA CLARA COUNTY BOARD OF EDUCATION, et al</p>	
<p>PROOF OF SERVICE BY MAIL OF: STATEMENT OF DECISION</p>	<p>Case Number: 1-13-CV-241695</p>

CLERK'S CERTIFICATE OF SERVICE: I certify that I am not a party to this case and that a true copy of this document was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below and the document was mailed at SAN JOSE, CALIFORNIA on : March 7, 2014.

David H. Yamasaki, Chief Executive Officer/Clerk

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