



FILED
ALAMEDA COUNTY

OCT 25 2017

By *[Signature]*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

MACARENA VALENZUELA, et al,

Plaintiffs,

v.

TOM TORLAKSON, et al,

Defendants.

No. RG16-805941

ORDER GRANTING PETITION FOR WRIT
OF MANDATE IN PART

Date: 10/25/17

Time: 9:00 a.m.

Dept.: 511

The petition of Macarena Valenzuela and T.A. ("Petitioners") for a writ of mandate under CCP 1085 directing Respondent California Department of Education; Tom Torlakson, and Chris Drouin (collectively "CDE") came on for hearing on 10/25/17, in Department 17 of this Court, the Honorable Kimberly Colwell presiding. The court provided a tentative decision to counsel before the hearing and neither party contested the tentative decision or appeared at the hearing. After consideration of the points and authorities and the evidence, as well as the oral argument of counsel, IT IS ORDERED: The petition of Petitioners for a writ of mandate under CCP 1085 directing the CDE to vacate or amend the Amended Investigation Report for Case S-0690-14/15 is GRANTED IN PART.

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1
2 STATUTORY AND REGULATORY FRAMEWORK

3 The federal Individuals with Disabilities Education Act (“IDEA”) requires State
4 Educational Agencies to ensure that children with disabilities receive a free appropriate public
5 education in the least restrictive environment. (20 USC 1400 et seq.) The CDE is the State
6 Educational Agency in California. The CDE must supervise individual school districts to ensure
7 that they meet IDEA’s requirements. (20 USC 1412(a)(1); 34 CFR 300.149; Ed Code 56135.)

8 Federal law establishes two separate procedures for complaints to the CDE. Complaints
9 can be under the informal administrative complaint procedure. (34 CFR 300.152.) This is
10 designed to be “efficient and easy to initiate.” (71 Fed Reg 46601 (8/14/06).) Alternately,
11 complaints can be under the formal due process procedure (34 CFR 300.507-515).
12 Federal also requires the CDE to monitor local school districts. (34 CFR 300.600.) One of the
13 CDE’s tools for monitoring is to undertake a Comprehensive Review. (Lee Dec., Exh F
14 [Comprehensive Review Guide].)

15
16 FACTS

17 The OUSD has a history of difficulty complying with special education requirements.

18 The 2007 FCMAT report found problems dating back to 2000. (Lee Dec., Exh A, 1-354.)
19 The FCMAT addresses special education and suggests that the OUSD to establish policy, issue
20 memos, train staff, and submit to more case reviews. (Lee Dec, Exh A, 215-223.)

21 In 2009-2010, the CDE conducted a review of OUSD and found many of the problems
22 persisted. The CDE ordered the OUSD to establish policy, issue memos, train staff, and submit
23 to more case reviews. (Lee Dec., Exh D, 593-647.)

24 In 2013, OUSD commissioned the Shepard Report, which found that many of the
25 previously identified problems still existed. (Lee Dec., Exh C, 553-563.) The Shepard Report
26

1 concluded by identifying issue of concern and suggesting next steps. (Lee Dec., Exh C, 582-
2 592.)

3 In 2016, CDE released a report on the OUSD that again found the same problems. The
4 CDE ordered the OUSD to train staff and submit to more case reviews. (Lee Dec., Exh E, 648-
5 739.)

6 On 3/16/15, Petitioners filed a complaint under the informal administrative complaint
7 procedure. (34 CFR 300.152) The administrative complaint dated 3/16/15 concerned 10
8 individuals, set out 7 claims, and for each claim set out individual and systemic violations. (AR
9 388-445)

10 The administrative complaint asserted three categories of claims: (1) that the Oakland
11 Unified School District (“OUSD”) failed to provide adequate services to ten specific students;
12 (2) that OUSD systematically failed to provide adequate services to students; and (3) that the
13 CDE has failed to monitor and supervise OUSD as required by 34 CFR 300.600.

14 On 11/6/15, the CDE issued its amended report. (AR 12-91.) The CDE’s amended report
15 found itself in compliance and found that OUSD was out of compliance with 10 of 18 alleged
16 violations of special education law.

17 On 9/12/16, the CDE found that the OUSD had complied with the report’s requirements
18 and the CDE closed the case. (AR 3965-3970.)

19
20 PROCEDURAL NOTE

21 Petitioner’s briefs read in large part like policy statements of what petitioners think the
22 CDE should do rather than legal arguments of what legal requirements the CDE failed to meet.
23 The briefs also commingled issues such as whether the CDE’s investigation of the claims in the
24 administrative complaint procedurally complied with the federal regulations (reviewed
25 independently), whether the CDE Report reasonably found that the CDE had complied with its
26 monitoring obligations (reviewed for “entirely lacking in evidentiary support”), and whether the

1 CDE's required corrective actions were designed to be effective (reviewed for abuse of
2 discretion). This order endeavors to identify the legal claims and address each under the
3 appropriate standard of review.

4 5 STANDARDS OF REVIEW

6 The petition is for a writ of ordinary mandamus under CCP 1085. "Ordinary mandamus
7 may be used to compel the performance of a duty that is purely ministerial in nature ... or to
8 correct an abuse of discretion." (*American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of*
9 *California* (2008) 162 Cal.App.4th 534, 547.)

10 The petition is under CCP 1085 because the decision at issue was not decided after a
11 quasi-judicial administrative process that required a hearing. (*McGill v. Regents of University of*
12 *California* (1996) 44 Cal.App.4th 1776, 1785). (See also *Williams v. Public Employment*
13 *Relations Bd.* (2012) 204 Cal.App.4th 1119, 1130.)

14 The court decides issues of statutory interpretation using its independent judgment.
15 (*Tafti v. County of Tulare* (2011) 198 Cal.App.4th 891, 896.)

16 The court reviews whether CDE has complied with procedural requirements using its
17 independent judgment. (*Rosenblit v. Superior Court* (1991) 231 Cal.App.3d 1434, 1443.)

18 The court reviews issues of fact for whether the decision was "entirely lacking in
19 evidentiary support." (*American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California*
20 (2008) 162 Cal.App.4th 534, 547-548.)

21 22 EVIDENCE

23 The Parties refer to the CDE's submission of evidence as the "Administrative Record."
24 Consistent with the parties, the court will refer to the CDE's submission of evidence as the
25 "AR."
26

1 That said, the court notes that there is no “administrative record” within the meaning of
2 CCP 1094.5(a). A CCP 1094.5 petition for an administrative writ by definition concerns an
3 adjudicative process that includes a hearing, the presentation of evidence and an adjudicative
4 decision and therefore generates a record of the evidence presented. (CCP 1094.5(a).) (*Madera*
5 *Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 61 [discussing
6 relationship between the administrative record and other types of evidence in CCP 1094.5
7 petition].)

8 A CCP 1085 petition, however, concerns claims to perform ministerial duties or to cease
9 or invalidate unlawful actions or decisions that are unsupported by evidence, abuses of
10 discretion, or unlawful. (E.g. *Mooney v. Garcia* (2012) 207 Cal.App.4th 229, 232-233
11 [ministerial]; *California Hosp. Ass'n v. Maxwell-Jolly* (2010) 188 Cal.App.4th 559, 569-570
12 [abuse of discretion and proper interpretation of law].) The factual situations that support a
13 petition under CCP 1085 are quasi legislative in nature or involve informal quasi-judicial
14 decisions and do not generate a record of the evidence regarding why the state entity has failed to
15 act or made the decision that it did. Therefore, in a petition under CCP 1085 the parties present
16 evidence just as they would in a trial.

17 Appellate authority states that “Extra-record” evidence is permitted in traditional
18 mandamus actions under CCP 1085 challenging ministerial duties, informal administrative
19 actions, or quasi legislative decisions if the facts are in dispute. (*City of Oakland v. Oakland*
20 *Police and Fire Retirement System* (2014) 224 Cal.App.4th 210, 238; *Bright Development v. City*
21 *of Tracy* (1993) 20 Cal.App.4th 783, 795 fn 13.) There is, however, no formal adjudicative
22 process in a CCP 1085 case, so there is no administrative record. All evidence in a CCP 1085
23 petition would seem to be extra-record.

24 In *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 576, the court
25 considered the content of a record in a CCP 1085 petition regarding a quasi-legislative decision
26 challenged under CEQA, where the public agency is required under Pub Res Code 21167.6 to

1 prepare an administrative record. *Western States* appears to have assumed that there was an
2 administrative record for non-CEQA CCP 1085 actions regarding ministerial duties, quasi-
3 legislative actions, or informal administrative actions because it stated “we will continue to allow
4 admission of extra-record evidence in traditional mandamus actions challenging ministerial or
5 informal administrative actions if the facts are in dispute.”

6 Petitioners are presenting their case on the evidence they offer into evidence, and the
7 CDE is defending the case with the evidence it offers in opposition. The court considers all the
8 evidence submitted. The court GRANTS all requests for judicial notice.

9
10 PETITIONERS MAY ASSERT INDIVIDUAL AND SYSTEM CLAIMS

11 Petitioners have beneficial interest standing to assert claims based on OUSD’s decisions
12 that affected them directly. Petitioner T.A. is student No. 7 and asserted what the DCE restated
13 as allegations 2, 4, and 7. Student V.G is student No. 9 and asserted what the DCE restated as
14 allegations 2, 4, and 7 as well, plus allegations 8 and 12.

15 Petitioners do not have standing to assert the individual claims of other persons. (CCP
16 367.)

17 Petitioners have standing to assert systemic claims under the public interest exception.
18 (*Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 914.)
19 (See also *Green v. Obledo* (1981) 29 Cal.3d 126, 144-145.)

20
21 CDE’S CONDUCT OF ITS INVESTIGATION IN RESPONSE TO THE ADMINISTRATIVE
22 COMPLAINT.

23 Petitioners suggest that the CDE was required to use the administrative complaint as a
24 vehicle for a comprehensive investigation of the OUSD. Petitioners assert that the CDE was
25 required to, and failed to, conduct a root cause analysis in response to the administrative
26 complaint. (Ptrn Opening at 18-20.)

1 Petitioners get the concept of a “root cause analysis” from the CDE Comprehensive
2 Review Procedure Guide 2015-16. (RJN, Exh F [the “CR Guide”].) The CR Guide states that
3 the CDE has a Quality Assurance Process (QAP) that in turn consists of data review, Special
4 Education Self Reviews, Comprehensive reviews, Critical Incident reviews, complaints, and
5 other matters. (Lee Dec, 743.) The CR Guide also states that the CDI may conduct a
6 Comprehensive Review as part of the monitoring required by 34 CFR 300.600. (Lee Dec, 743.)
7 The CR Guide states that as part of a Comprehensive Review, the CDE can conduct a “root cause
8 analysis.” (Lee Dec, page 826.)

9 The CDE’s response to the administrative complaint was not a Comprehensive Review.
10 Furthermore, the comprehensive nature of a Comprehensive Review suggests that the CDE
11 cannot do one in response to an administrative complaint, which is supposed to be completed in
12 60 days. (34 CFR 300.152(b)(1).) Even if the CDE did select OUSD for a Comprehensive
13 Review (Lee Dec, page 745), the CR Guide indicates that a root cause analysis is an optional part
14 of a Comprehensive Review. The CDE was not required to conduct a root cause analysis in
15 response to the administrative complaint.

16 Petitioners also suggest that CDE has obligations that are stated in the United States
17 Department of Education, Office of Special Education Programs memo dated 7/23/13. (RJN,
18 Exh L [OSEP memo].) (Opening brief at 3:12-25; Reply brief at 9:12-27.) The OSEP memo is
19 a “Q&A” document that states that it provides “guidance” on state complaint procedures. (Lee
20 Dec, page 866.) The OSEP memo states that “It does not confer or create any rights for or on any
21 person. This guidance does not impose any requirements beyond those required by applicable
22 law and regulations.” (Lee Dec, page 867.) The court reads the OSEP memo as guidance and a
23 statement of good practices. The court gives substantial weight to the OSEP memo in
24 interpreting the federal regulations and the CDE’s obligations under those regulations. (*Yamaha*
25 *Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 14-15.) The court will not,
26 however, elevate a guidance memorandum to the level of a regulatory requirement.

1
2 CDE'S CONSIDERATION OF ALL MATERIAL ALLEGATIONS – 34 CFR 300.152(a)(5).

3 Petitioners assert that the CDE was required to, and failed to, respond to each allegation
4 in the administrative complaint. 34 CFR 300.152(a)(5) states that following an informal
5 administrative complaint, the CDE must “(5) Issue a written decision to the complainant that
6 addresses each allegation in the complaint and contains (i) Findings of fact and conclusions; and
7 (ii) The reasons for the SEA's final decision.”

8 The court interprets 34 CFR 300.152(a)(5) using its independent judgment and applies
9 the usual tools of statutory construction. The plain language is that the CDE must address “each
10 allegation” and state findings of fact and the reasons for its resolution of each allegation. The
11 apparent purpose of the requirement is to ensure that the CDE addresses each allegation and
12 provides the complainant with responsive findings of fact and the reasons. (*Topanga Assn. for a*
13 *Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514-518.) The requirement
14 in 34 CFR 300.152(b)(1) that the administrative process be complete within 60 days absent
15 “exceptional circumstances” suggests that the State Educational Agency focus on the material
16 allegations. The informal nature of the 34 CFR 300.152 complaint process when compared to
17 the 34 CFR 300.507 et seq due process procedure suggests that the court not complicate the
18 informal process. In addition, the court will read the regulation so that it is “workable and
19 reasonable in practice.” (*Allende v. Department of Cal. Highway Patrol* (2011) 201 Cal.App.4th
20 1006, 1018.)

21 The court interprets 34 CFR 300.152(a)(5) to mean that the CDE must respond to the
22 material allegations in the complaint. The court will not interpret 34 CFR 300.152(a)(5) to
23 require the CDE to respond to each and every allegation in a complaint. Such a requirement
24 would complicate the informal process and would not be workable and reasonable in practice.
25 This interpretation is consistent with *California Hotel & Motel Assn. v. Industrial Welfare Com.*
26 (1979) 25 Cal.3d 200, 214, where the court held that a “statement of basis” under Labor Code

1 1171 required “a reasoned response to or resolution of the salient comments, criticisms, issues,
2 and alternatives developed during the commission's proceedings .” “Salient” is analogous to
3 “material.” The application of the “material” standard is fact specific.

4 The CDE had a ministerial duty to comply with this requirement. (*Galzinski v. Somers*
5 (2016) 2 Cal.App.5th 1164, 1171-1174.)

6 The 3/16/15 administrative complaint set out 7 claims against OUSD that concerned 10
7 individuals and for each claim set out individual and systemic violations. (AR 388-445) On
8 4/6/15 CDE sent a letter that summarized and restated the allegations and sought clarification if it
9 had “mischaracterized or failed to identify” any allegations. (AR 247 [letter], 181 [17 restated
10 allegations].) On 4/20/15, Petitioners responded with numerous corrections and additions. (AR
11 225-236.) On 4/24/15, CDE sent the OUSD a Request For Information letter that identified the
12 10 students and the 5 systemic issues. (AR 197-220.) On 4/24/15, CDE also sent the OUSD a
13 letter with the list of the 18 allegations that it would investigate. (AR 221-224.) CDE’s
14 Amended Investigation Report addresses the 18 reframed allegations. (AR 13-78.)

15 The Court finds that the CDE did comply with 34 CFR 300.152(a)(5) and addressed
16 Petitioner T.A. (student No. 7)’s claims concerning allegations 2 (AR 31 [out of compliance]), 4
17 (AR 41-42 [out of compliance]), and 7 (AR 56-57 [in compliance]).

18 The Court finds that the CDE did comply with 34 CFR 300.152(a)(5) and addressed
19 Petitioner V.G. (student No. 9) concerning allegations 2 (AR 35 [out of compliance]), 4 (AR 44-
20 45 [out of compliance]), 7 (AR 58-59 [in compliance]), 8 (AR 6364 [in compliance]) and 12 (AR
21 70-71[in compliance]).

22 The administrative complaint asserted that OUSD had systemic failures. Petitioners
23 argue that the CDE addressed ten of the systemic failure allegations but did not address seven
24 (Numbers 6, 14, 15, 16, 17, and 18.)

25 The CDE did not explicitly address OUSD’s systemic issues regarding Allegation 6
26 (which concerned students one, two, four, and eight). The CDE did, however, find that it was

1 out of compliance (AR 51) and directed OUSD to provide systemic relief in the form of a memo
2 for Allegation 6 (AR 88). The court finds the CDE Report adequately addressed and recognized
3 a systemic violation.

4 The CDE did not address systemic issues regarding Allegation 3 (which concerned only
5 student ten), 14 (which concerned only student five), 15 (which concerned only student five), 16
6 (which concerned only student six), 17 (which concerned only student eight), and 18 (which
7 concerned only student five). The court finds that if a complaint identifies a single alleged
8 violation, then summary allegations of a systemic problem are not material if they are conclusory
9 and extrapolate from a single violation. The court finds the CDE Report was not required to
10 investigate and address a category of alleged systemic violation absent some indication of the
11 alleged systemic violation.

12 The court finds that petitioners only have standing to assert individual claims on their
13 own behalf. Therefore, the court does not reach the issue of whether the CDE adequately
14 responded to the individual allegations of each of the 10 original complainants.

15
16 CDE'S EXPLANATION OF REASONING – 34 CFR 300.152(a)(5).

17 Petitioners assert that the CDE was required to, and failed to, state findings of fact and the
18 reasons for the SEA's final decision. 34 CFR 300.152(a)(5) states that following an informal
19 administrative complaint, the CDE's written decision must contain both "(i) Findings of fact and
20 conclusions; and (ii) The reasons for the SEA's final decision."

21 Petitioners argue that the CDE Report failed to explain why it made orders regarding
22 some individuals but not for others. (Ptnrs Opening at 15-16.) Petitioners do not have standing
23 to make those claims on behalf of individuals.

24 ///

1 CDE'S FINDINGS REGARDING ALLEGATION ONE – MONITORING REQUIRED BY 34
2 CFR 300.600

3 Petitioners argue that CDE's finding that it was in compliance with the 34 CFR 300.600
4 requirement to provide general monitoring is "entirely lacking in evidentiary support."

5 The court addresses whether 34 CFR 300.600 requires (1) monitoring alone or (2) both
6 monitoring and corrective action. The court interprets 34 CFR 300.600 using its independent
7 judgment and applies the usual tools of statutory construction.

8 34 CFR 300.600(a) clearly requires monitoring, stating "The State must "Monitor the
9 implementation of this part." The dictionary definition of "monitor(ing)" is "observe(ing),
10 record(ing) or detect(ing); check(ing) continually." (*Timekeeping Systems, Inc. v. PatrolLIVE*
11 *International, Inc.* (E.D. Oh., 2017) 2017 WL 2378114 at *5-6; *NEI Contracting and*
12 *Engineering, Inc. v. Hanson Aggregates Pacific Southwest, Inc.* S.D. Cal. 2015) 2015 WL
13 1346110 at *3.) 34 CFR 300.600 is focused in large part on the identification of quantifiable
14 indicators, the collection of data, and the analysis of that data. (34 CFR 300.600(c) and (d); 34
15 CFR 300.601; 34 CFR 300.602.)

16 The CDE Report identifies facts demonstrating that it monitored the OUSD in form of
17 collecting, reviewing, and analyzing data, reviewing policies, and investigating complaints. (AR
18 15-16.) The CDE Report's conclusion that the CDE conducted effective monitoring is not
19 "entirely lacking in evidentiary support."

20 34 CFR 300.600(e) states "In exercising its monitoring responsibilities [to monitor the
21 Local Educational Agencies], the State must ensure that when it identifies noncompliance with
22 the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in
23 no case later than one year after the State's identification of the noncompliance." The plain
24 language of this section is that the CDE has an obligation to take corrective action.

25 The CDE Report identifies facts demonstrating that it required corrective action. The
26 CDE sent a 9/25/15 letter to the OUSD requiring corrective action related to the 60 [day]

1 timeline for holding IEPs, completing triennials on time, and complete transition plans. The
2 CDE also ordered corrective actions based on 27 administrative complaints. (AR 16.) The CDE
3 Report's conclusion that the CDE took corrective action is not "entirely lacking in evidentiary
4 support."

6 CDE'S REMEDY FOR VIOLATIONS

7 Petitioners assert that the CDE was required to, and failed to, require effective remedies
8 for violations. (Ptnr Opening at 20-23.)

9 34 CFR 300.152(b)(2) states that the CDE's procedures must "Include procedures for
10 effective implementation of the SEA's final decision, if needed, including— (i) Technical
11 assistance activities; (ii) Negotiations; and (iii) Corrective actions to achieve compliance." The
12 court reads 34 CFR 300.152(b)(2)'s requirement of "effective implementation" in light of 34
13 CFR 300.600(c)'s requirement of "effective monitoring."

14 34 CFR 300.151(b)(2) states that the CDE's remedy must address both the services for
15 the child at issue and "Appropriate future provision of services for all children with disabilities."

16 The court reviews the adequacy of CDE's remedies for abuse of discretion. In the context
17 of reviewing administrative decisions under CCP 1094.5, the trial court will not disturb the
18 penalty imposed by an administrative body unless the petitioner demonstrates an abuse of
19 discretion. "Neither an appellate court nor a trial court is free to substitute its discretion for that
20 of the administrative agency concerning the degree of punishment imposed." (*Barber v. State*
21 *Personnel Bd.* (1976) 18 Cal.3d 395, 404.) (See also *Siskiyou County v. State Personnel Bd.*
22 (2010) 188 Cal.App.4th 1606, 1615; *Marek v. Board of Podiatric Medicine* (1993) 16
23 Cal.App.4th 1089, 1099- 1100.) Although the petition in this case is under CCP 1085, the court
24 will apply the same standard of review.

25 The "abuse of discretion" standard of review is consistent with the OSEP memo. OSEP
26 memo Question B-10 is "If there is a finding that a State complaint that a child or group of

1 children has been denied FAPE [free appropriate public education], what are the remedies?”
2 The Answer concludes, “Thus, an SEA, pursuant to its general supervisory authority, has broad
3 flexibility to determine appropriate remedies to address services to an individual child or group
4 of children.” (Lee Dec., page 895.) The OSEP memo’s statement that state educational agencies
5 like the CDE have “broad flexibility to determine appropriate remedies” is consistent with an
6 abuse of discretion standard of review.

7 The “abuse of discretion” standard is fact specific. The federal regulations suggest that a
8 state agency should not permit a school district to remain in systematic non-compliance for years
9 on end or to tolerate a pattern of systematic violations, short terms solutions, and relapsing into
10 systematic violations. 34 CFR 300.600(e) states: “In exercising its monitoring responsibilities
11 ..., the State must ensure that when it identifies noncompliance with the requirements of this part
12 by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year
13 after the State's identification of the noncompliance.” Therefore, a remedy that might be
14 adequate for a single violation might be an abuse of discretion if the CDE was aware that the
15 remedy had been ineffective for many years.

16 Regarding TA (student No. 7), the CDE found violations of allegations 2 and 4 (AR 31,
17 41-42). The court finds that the CDE’s remedies regarding TA (student No. 7) are responsive to
18 the violations of allegation 2 (AR 86), and allegation 4 (AR 87) and are not an abuse of
19 discretion.

20 Regarding VG (student No. 9), the CDE found violations of allegations 2 and 4 (AR 35,
21 44-45). The court finds that the CDE’s remedies regarding VG (student No. 9) are not an abuse
22 of discretion. The remedies are responsive to the violations of allegation 2 (AR 87). There was,
23 however, no remedy responsive to the violation of allegation 4 (AR 87).

24 Regarding systemic issues, the CDE found violations of allegations two, four, five, eight,
25 nine, eleven, and thirteen. (AR 78-84.) The CDE consistently decided that the appropriate
26

1 remedy for the systemic violations was to establish policy, issue memos, train staff, and submit to
2 more case reviews. (AR 88-89). Viewed in isolation, these are reasonable remedial measures.

3 Petitioners argue that the CDE's remedies were an abuse of discretion when viewed in the
4 context of the OUSD's history of violations. The issue hinges in part on whether the CDE knew
5 or should have known that the requirements of policies, memos, training, and case reviews had
6 been ineffective in the past.

7 The administrative complaint informed the CDE of OUSD's history of non-compliance.
8 (AR 396-399.) The administrative complaint provided the CDE with the internet location of the
9 2007 FCMAT report (Lee Dec., Exh A, 1-354) and the 2013 Shepard Report (Lee Dec., Exh C,
10 557-563), but it did not attach the reports. These documents were effectively presented to the
11 CDE. (*Consolidated Irr. Dist. v. Superior Court* (2012) 205 Cal.App.4th 697, 724-725
12 [provision of URL is adequate to present document in administrative proceedings].)

13 The administrative complaint did not assert that the remedies of policies, memos,
14 training, and reviews would be ineffective. CDE did, however, have an independent obligation
15 under 34 CFR 300.152(a)(4) to "Review all relevant information and make an independent
16 determination."

17 The court finds that the CDE knew or should have known that the requirements of
18 policies, memos, training, and case reviews had been ineffective in the past. Given the historical
19 inadequacy of those corrective requirements, a reasonable person would not think that an
20 "effective implementation" of the Report would be to impose the same remedies as had been
21 required repeatedly since 2007. Is it not reasonable for the CDE to require the same remedy
22 over and over and expect a different result the next time. The CDE abused its discretion and
23 violated 34 CFR 300.152(b)(2)(iii) and 34 CFR 300.151(b)(2) by requiring only corrective
24 actions that had historically been ineffective.

25 ///

1 CONCLUSION

2 The petition for a writ of mandate is GRANTED IN PART.

3 CDE had no obligation to conduct a root cause analysis in response to an administrative
4 complaint.

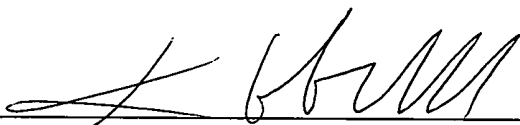
5 Regarding the individual claims of students 7 and 9, CDE adequately considered all
6 material allegations and adequately explained its reasoning. CDE did not abuse its discretion in
7 requiring corrective actions for student 7. CDE did abuse its discretion by not requiring any
8 corrective actions for student 9 regarding allegation 4.

9 Regarding the systemic claims, CDE adequately considered all material allegations, and
10 adequately explained its reasoning, but abused its discretion in requiring corrective actions that
11 history had demonstrated to be ineffective.

12 The court will enter judgment to the effect that:

- 13 1. The CDE must either direct the OUSD to provide corrective action for student 9
14 regarding allegation 4 or explain why corrective action is not appropriate.
- 15 2. The CDE must reopen the Amended Investigation Report for Case S-0690-14/15 and
16 consider whether the corrective action required by OUSD for the systemic violations
17 identified and found in the Amended Investigation Report is reasonably calculated to be
18 effective in light of the prior ineffectiveness of similar previously ordered corrective
19 actions.
- 20 3. The judgment will not limit or control in any way the discretion legally vested in the
21 CDE. (CCP 1094.5(f).)

22
23 Dated: October 25, 2017

24 
25 Kimberly Colwell
26 Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number: RG16805941

Case Name: Valenzuela vs. Torlakson

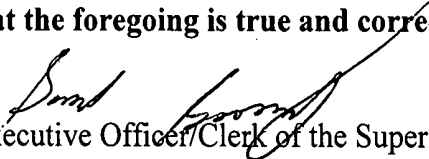
- 1) Order Granting Petition for Writ of Mandate in Part

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing **Order Granting Petition for Writ of Mandate in Part** was mailed first class, postage prepaid, in a sealed envelope, addressed as shown below by placing it for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

I declare under penalty of perjury that the foregoing is true and correct. Executed on

October 31, 2017


Executive Officer/Clerk of the Superior Court
By M. Scott Sanchez, Deputy Clerk

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