

Alliance

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*This Alliance Report highlights the newest cases.
For information on other cases, please contact us.*

We fight better when we stand together

The Education Legal Alliance of the California School Boards Association initiates and supports litigation on behalf of public schools. This consortium of school districts, county offices of education (COEs) and regional occupational centers/programs voluntarily joins together to impact education issues and case law.

Formed in 1992 to challenge the constitutionality of property tax collection fees imposed on all school districts and COEs, the Alliance continues to be successful in pursuing and defending the broad spectrum of statewide public education interests in the courts and before state agencies.

Process for submission of cases to the Alliance: When a district/county office is involved in an issue of statewide significance, requests for assistance may be submitted to the Alliance. An Attorney Advisory Committee, consisting of experts in the field of education law, reviews the case and makes a recommendation to the Alliance Steering Committee. The Steering Committee, consisting of board members, superintendents and representatives of education groups, makes the final determination as to whether the Alliance should become involved in the case.

IMPORTANT NEWS

School Finance Litigation

Robles-Wong v. State of California/Alameda County Superior Court

On May 20, 2010, the California School Boards Association filed a historic lawsuit against the State of California requesting that the current education finance system be declared unconstitutional and that the State be required to establish a school finance system that provides all students an equal opportunity to meet the academic goals set by the State.

The case, *Robles-Wong, et al. v. State of California*, was filed in the Superior Court of California in Alameda County. Specifically, the suit asks the court to compel the State to align its school finance system—its funding policies and mechanisms—with the educational program that the State has put in place. To do this, plaintiffs allege, the State must scrap its existing finance system; do the work to determine how much it actually costs to fund public education to meet the state's own program requirements and the needs of California's school children; and develop and implement a new finance system consistent with Constitutional requirements.

The lawsuit was filed by a broad coalition, including more than 60 individual students and their families, nine school districts from throughout the State, CSBA, the California State PTA, and the Association of California School Administrators (ACSA).

"Filing this lawsuit was a last resort," said CSBA President Frank Pugh. "Education funding



has been in a deteriorating spiral in California for decades. A failure to act now threatens the future of California's students and the future of our state. The governor and lawmakers have known for some time that the current school finance system is harming students and they've done nothing to remedy the crisis. The \$17 billion in cuts to education have only made a dire situation even worse. California's unstable, unsound and insufficient school finance system is robbing our students of an education."

For more information about the school finance lawsuit, visit www.fixschoolfinance.org.



SUPPORT THE EDUCATION LEGAL ALLIANCE

When the Alliance enters a legal case, everyone wins. The Education Legal Alliance needs your continued support. Renew your membership or join the Alliance so we can continue the fight and take on issues that impact all students and schools. We are counting on YOU to make a difference.

Invoices were recently mailed for 2010-11 CSBA and ELA dues. Please support the work of the Alliance and renew or join today. Visit www.csba.org/JoinELA.aspx to learn more.

MAJOR VICTORIES

The following section highlights the recent major victories of the Alliance.

Algebra I Mandate

CSBA/ELA, ACSA v. State Board of Education/California Court of Appeal

Issue:

Did the State Board of Education's (SBE) July, 2008 action to designate Algebra I as the Grade 8 assessment violate the Bagley-Keene Open Meeting Act and exceed the SBE's authority?

Background:

In the fall of 2007, the U.S. Department of Education found California's assessment system to be out of compliance with the No Child Left Behind Act because two assessments are available for grade 8 level students: 1) Algebra I for students enrolled in Algebra I; and 2) Grade 8 General Math Assessment for students not enrolled in Algebra I. Because the General Math Assessment was based entirely on grade 6 and 7 academic content standards, it was determined by USDOE not to be at "grade level," as required by NCLB. In July 2008, the SBE voted to direct the California Department of Education to enter into a Compliance Agreement with USDOE to transition into implementing the Algebra I assessment for all 8th graders over a three-year period. CSBA and ACSA filed litigation to invalidate the SBE's July action.

Alliance Activities:

In a major victory for the Alliance, in April the appellate court upheld the trial court's preliminary injunction finding that the SBE had violated the open meeting statutes and

declaring the SBE's decision null and void. This affirmation of the trial judge's order prevents the SBE from implementing their action, including finalizing a timeline waiver or compliance agreement with the USDOE. The SBE appealed the trial court's decision on the issue of the SBE's authority to amend the standards. Superintendent of Public Instruction Jack O'Connell and the California Teachers Association joined in the suit.

Why this issue is important:

The SBE's decision is a significant change in statewide policy and resulted in a new mandate on districts without any funds allocated to support the new mandate. While CSBA believes that it may be worthwhile to discuss at the statewide level when students should take Algebra I, CSBA disagrees with the process used by the SBE to make the decision and the SBE's agenda did not provide an opportunity for the public to express its views. In addition, the SBE's decision was made without any discussion as to the resources necessary to implement the new mandate nor was there any discussion as to other implementation issues, such as changes to laws regarding teacher preparation, instructional materials, and professional development. In addition, SBX5 I, signed by the governor in January, changes the playing field by requiring the formation of a standards commission and possible adoption of new standards based on the national common core standards. This legislation changes the playing field.

Distribution of Educational Revenue Augmentation Funds

Los Angeles Unified School District v. Auditor/Controller, County of Los Angeles/California Court of Appeal

Issue:

Should Educational Revenue Augmentation Fund (ERAF) funds be considered property tax revenues received for purposes of determining the pro rata distribution of property tax from redevelopment projects?

Case Status:

The Alliance filed an amicus brief in support of LAUSD's ultimately successful action in the appellate court. In April, the California Supreme Court denied review of the case, thus making the appellate decision final.

School districts with redevelopment agencies (RDAs) within their borders share in the tax increment increases resulting from redevelopment projects after the project property is removed from the real property tax rolls. School districts share these "pass-through" payments with other local agencies supported by local property tax revenue and do so "in proportion to the percentage share of property taxes each affected taxing entity receives ... during the fiscal year the funds are allocated." It is important to school districts that the calculations are done correctly as 56% of the "pass-through" funds may be used for facilities and do not count toward the State's revenue guarantee to schools.

The appellate court held that LAUSD was entitled to the "post-ERAF" calculation. In Los Angeles County, and many other counties, transfers of tax revenue into a school district's ERAF are not included as "taxes received" in the calculation of "pass-through" payments. LAUSD sued Los Angeles County and the RDAs within its boundaries claiming that the district's "pass-through" payments should be based on a "post-ERAF" calculation basis.

Given that redevelopment projects sometimes continue for 40 years, substantial amounts of additional revenue may be available for district facilities. LAUSD estimates that it will receive an additional \$2.4 billion in increased "pass-through" funding over the next 40 years.

This court of appeal decision is important for all school districts having RDAs within their boundaries. For those districts in counties where the "post-ERAF" calculation is already occurring, there is no change. In those counties making the calculation on the



“pre-ERAF” basis, as was done in Los Angeles County, substantial increased facilities funding could result.

The Alliance is exploring how all school districts subject to the “pre-ERAF” calculation for determining “pass-through” amounts may benefit from LAUSD’s victory.

CURRENT ISSUES

The following section provides an overview of important issues that the Alliance has been working on, such as a legal issue before a state agency, an issue in the trial court the Alliance is tracking, or an issue on which the Alliance is initiating legal action:

Proposition 39 Charter School Facilities Regulations

CSBA/ELA et al. v. SBE et al./California Court of Appeal

Issue:

Has the SBE exceeded its authority in developing revised regulations regarding Proposition 39 facility requests by charter schools?

Background:

In 2007, the CDE proposed revisions to the existing SBE regulations to incorporate four court decisions governing Proposition 39 charter school facilities requests. The regulations were ultimately approved by the SBE and the Alliance filed litigation challenging several provisions.

Alliance Activities:

The case is currently pending in the appellate court and a decision is expected by mid-2010. The trial court issued a ruling that invalidated several significant provisions of the new regulations, but rejected other issues raised by CSBA. In an important victory, the trial court rejected provisions related to conversion charter schools. The California Charter Schools Association filed an appeal of the trial court’s ruling regarding conversion charters. As a result, the Alliance countered with an appeal as to the portion of the trial court’s ruling adverse to district interests.

Why this issue is important:

Many of these proposed revisions are detrimental to districts and regulate issues that should be within district discretion. With the SBE exceeding its authority, this has now become a battle over maintaining maximum district discretion when dealing with requests for facilities pursuant to Proposition 39.

Mandate Deferral Lawsuit

CSBA/ELA, et al. v. State of California, et al./California Court of Appeal

Issue:

Does the State have the authority to simply appropriate \$1,000 for each K-12 mandate and defer payment of the balance to another fiscal year?

Background:

The State Constitution requires that whenever the State mandates a new program or higher level of service on any local government, it must reimburse the local government for the costs incurred unless funding for the mandates is completely deleted or the mandate is suspended.

However, beginning in the 2002-03 fiscal year, the State has deferred payment on the 38 K-12 reimbursable state mandated programs by approving only \$1,000 per mandate, even though the costs of these mandates, and the claims submitted, far exceed that amount. This budget-balancing technique is used by the Legislature and governor in an attempt to satisfy the State's Proposition 98 guarantee and to deny districts the ability to avoid performing the mandated program or service.

Over the last several years, the state budgets have failed to appropriate enough money to cover current mandates or pay off the amount owed by the state for prior claims. Annual amounts continue to increase and the carry-over "credit card debt" from prior years is expected to exceed \$1 billion by the end of 2009-10.

Alliance Activities:

This case is currently pending before the court of appeal. The Alliance filed a lawsuit challenging the State's authority to defer mandate payments and to compel the State to fully reimburse districts and COEs for all new programs or higher levels of service. The Superior Court ruled that the California Constitution requires the State to budget full reimbursement of local governments (including school districts) for the cost of state-imposed mandates. The judge's ruling prohibits this deferral practice in the future, although the decision has been stayed (held in abeyance) pending the outcome of the appeal.

Why this case is important:

School districts and COEs are being forced to bear the costs of new programs and higher levels of service mandated by the State until some future time when the State chooses to appropriate funding. Forcing the State to follow the statutory requirement to either fully budget the mandates or suspend the mandates gives districts the ability to avoid having to perform the mandated programs or services.

Behavioral Intervention Plans

COSM/Sacramento Superior Court/Legislature

Issue:

Do state requirements for behavioral intervention plans, specified in the Education Code and Title 5 regulations, require Local Education Agencies to perform activities not required under federal law and thus constitute a state-mandated program subject to reimbursement?

Background:

In 1990, legislation was enacted requiring the SBE to adopt regulations concerning behavioral intervention plans for pupils who exhibit serious behavior problems that interfere with their education. Eventually, the Commission on State Mandates (COSM) adopted a decision agreeing that the regulations imposed a reimbursable state mandate, but the COSM decision has not been implemented pending conclusion of what became stalled negotiations to settle the exact amount owed by the State.

Alliance Activities:

Although the parties agreed to a settlement in December, 2008 which would have resulted in payments to districts, the Legislature failed to appropriate funding during the 2009-10 state budget. However, with the support of the Department of Finance the Alliance is working to include the settlement, with the amount increased to account for another year of delay, into the 2010-11 state budget.

Why this issue is important:

State requirements for behavioral intervention plans are detailed and costly. LEAs are being required to implement an increasing number of BIPs and it is important that this mandate is reimbursed.

NEW ALLIANCE CASES

The following section discusses cases in which the CSBA Executive Committee or ELA Steering Committee has approved Alliance involvement.

Requirement to Arbitrate Preempted Law

UTLA v. LAUSD/California Supreme Court

Issue:

Can courts compel binding arbitration over a board's approval of a charter school petition when the collective bargaining provisions upon which the grievance is based are preempted by the Education Code?

What this case is about:

In 2007, the LAUSD board approved a petition to convert a high school into a charter school. At that time, the district's collective bargaining agreement set forth procedures for converting a school to charter school. UTLA filed a grievance against the district alleging that the district had violated specific provisions of the bargaining agreement regarding notice to employees of the charter.

The district denied the union's grievance and refused to submit to arbitration on the grounds that the bargaining agreement was preempted by the sections of the Education Code which specify that the approval or a denial of a charter petition by a granting agency shall not be controlled by collective bargaining agreements nor subject to review or regulation by the Public Employment Relations Board. UTLA sued to enforce arbitration and LAUSD prevailed in the trial court. UTLA appealed.

The court of appeal did not rule on the legality of the provisions in the bargaining agreement, but reversed the trial court and held that preemption of the statute is a defense to be presented to the arbitrator. If the arbitrator concludes that the district violated the agreement, then the district may challenge the arbitrator's decision in the trial court based upon this defense. The Supreme Court granted LAUSD's request for review.

Why this case is important:

This case is of statewide significance in that it allows arbitration to proceed when, as a matter of law, the collective bargaining provisions upon which arbitration is based are invalid. Allowing arbitration to proceed under these circumstances limits the board's authority to grant or approve charter petitions and could result in an increase in lawsuits against the district by charter operators.

Role of the Alliance:

The Alliance has filed an amicus brief in support of the district. The Alliance's brief focused on upholding the principle that a bargaining agreement cannot interfere with a statute and the statewide impact of ensuring that chartering authorities maintain maximum discretion when determining whether to grant a charter.

Timeline for Commencement of Dismissal Hearing

Kaye v. San Leandro USD/California Court of Appeal

Issue:

Is the 60-day timeline for commencement of a hearing on the charges for dismissal of a certificated employee directory or mandatory?

What this case is about:

The district sought to dismiss a permanent certificated employee based upon an investigation that revealed STAR testing irregularities in the teacher's class. The district followed the dismissal process and the teacher demanded a hearing. At issue before the court is the timeline for when the hearing must be commenced by the Office of Administrative Hearings (OAH). The law specifies that, when an employee requests a hearing, the hearing shall be commenced within 60 days of the employee's demand for a hearing. However, the district's request to OAH started this 60-day timeline from the date of the teacher's Notice of Defense, not the date of the teacher's demand for the hearing.

The teacher filed suit in the Superior Court on the grounds that the hearing was not commenced within 60 days of her original demand and the failure to comply with the 60 day timeline was a breach, similar to the right to a speedy trial in criminal cases, which deprived the district and OAH of jurisdiction to move forward with her termination. The court agreed and ordered dismissal of the hearing, reinstatement of the employee, and payment for fees and costs incurred by the teacher. The district then filed this appeal.

The district argues that, even if the hearing date was set outside of the 60-day timeline, that timeline is directory not mandatory and does not act as a statute of limitation which would prohibit the case from moving forward.

Why this case is important:

Although the facts in this case appear problematic in that the district failed to file the paperwork in a timely manner, it is important that the Alliance participate in this case in an attempt to influence the outcome. The "directory" versus "mandatory" analysis is an important legal proposition and the failure to meet the deadline was a procedural error which was not prejudicial to the teacher. Such an error should not control the outcome of the proceeding and prohibit the district from moving forward with the dismissal.

Role of the Alliance:

The Alliance will file an amicus brief in support of the district.



RULINGS/SETTLEMENTS IN ACTIVE ALLIANCE CASES

Since last issue of the Alliance Report, there has been a court ruling in the following cases in which the Alliance has filed a lawsuit or an amicus brief.

Baseline for Assessing Environmental Impacts

Communities for a Better Environment v. South Coast Air Quality Management District (SCAQMD)/ California Supreme Court

Issue:

What is the “baseline” for assessing the impacts of modifications to existing facilities for purposes of environmental review under the California Environmental Quality Act (CEQA)?

Case Status:

Under CEQA, a public agency must prepare an Environmental Impact Report (EIR) for any project that may have a significant impact on the environment. Before the impacts of a project can be assessed and mitigated, an EIR must describe the “baseline” existing environmental conditions. The “baseline” determination is a crucial step in the CEQA process, because the baseline can affect whether the project’s impacts will be deemed significant, or indeed whether a project is subject to CEQA at all.

At question in this case was whether SCAQMD should have calculated the baseline based on existing conditions at the plant or based on the hypothetical conditions that were permitted under existing zoning and already-issued permits. The project was expected to increase emissions from the facilities; however, the increases would not exceed the maximum emissions allowed under the existing permits. In this case, SCAQMD used the maximum permitted emissions levels to establish the baseline and did not consider the anticipated increase in emissions as part of the project. The agency’s negative declaration resulted in this legal challenge.

The Supreme Court found that the maximum permitted operations was not “a realistic description of the existing conditions,” and that using the existing permits to establish the baseline violated CEQA. However, the Supreme Court did not attempt to dictate an alternative method for calculating the baseline, but rather left the issue to the agency’s determination.

The Alliance’s amicus brief focused on the impact this decision could have on school districts since the CEQA baseline for existing facilities is an issue when districts construct, remodel, renovate, modernize and upgrade their facilities. However, the court’s decision did not discuss the issue raised by the Alliance’s brief.

CEQA Statute of Limitations

Committee for Green Foothills v. County of Santa Clara et al., Leland Stanford Junior University, et al. RPI/ California Supreme Court

Issue:

Does a local agency’s properly filed and posted notice of determination (NOD) trigger the 30-day statute of limitations for CEQA challenges or may a court disregard the NOD and apply a longer limitations period if the plaintiff alleges that the agency did not comply with CEQA when it approved the project?

Case Status:

The Alliance filed an amicus brief in support of the County of Santa Clara and its Board of Supervisors. This case concerns a NOD adopted by the supervisors approving an easement between Stanford and the county relating to public trails. The county had completed an EIR that evaluated the environmental effects of planned campus development and identified mitigation measures for those impacts.

There is no dispute that the NOD met CEQA's content requirements or that it was filed and posted in a timely fashion. The NOD stated that an EIR was prepared, that findings were made under CEQA, that mitigation measures were made a condition of approval, and that the project would not have a significant effect on the environment.

At issue in this case was, when a NOD has been issued, which statute of limitations applied: (1) the general 30-day limit on challenges following a notice, or (2) the longer 180-day period provided for a case alleging that no environmental determination was made. The Supreme Court agreed with Alliance and the County and reversed the appellate court's ruling. The Court held that the filing of a NOD under CEQA triggers a 30-day statute of limitations for all CEQA challenges to the decision announced in the notice.

OTHER ACTIVE CASES

A court decision is pending in the following cases in which the Alliance has filed or will file an amicus brief.

Split Roll Parcel Tax

Beery/Borikas v. Alameda Unified School District/Alameda County Superior Court

Issue:

Does a parcel tax which charges different rates for residential and commercial parcels violate the requirement that the tax be "uniform?"

Use of Public Funds for Campaign Communications

CSBA et al v. Fair Political Practices Commission/Sacramento County Superior Court

Issue:

Has the Fair Political Practices Commission exceeded its statutory authority by adopting regulations regarding the use of public funds for communications about ballot measures?

Bargaining of the Decision to Layoff Employees

International Association of Fire Fighters, Local 188 v. PERB (City of Richmond, RPI)/California Supreme Court

Issue:

Is the decision to layoff employees a mandatory subject of collective bargaining under the Meyers-Milias-Brown Act?



Liability for Cost Overruns in Facility Contracts

Los Angeles USD v. Great American Insurance Co. et al./California Supreme Court

Issue:

Must a school district pay a contractor for cost overruns beyond an agreed-upon contract price when there is no evidence the district had any intent to defraud?

Mandated Cost Claim Audits by the State Controller's Office

Clovis USD, et al. v. Controller/California Court of Appeal

Issue:

Has the State Controller's Office imposed unreasonable documentation requirements in audits of mandated cost claims, thus thwarting districts from receiving reimbursement for state-mandated costs?

Statewide Benefit Charter Schools

CSBA/ELA, CTA, ACSA, Stockton USD v. SBE/California Court of Appeal

Issue:

Must the SBE determine, based on credible evidence, whether a proposed statewide benefit charter will provide instructional services of statewide benefit that cannot be provided by a charter school operating in only one district or county before granting the charter statewide?

Education Legal Alliance

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** As a result of an agreement with ACSA, the Alliance has a non-voting position on ACSA's Education Legal Support Fund board and ACSA likewise has a similar non-voting position on the Alliance Steering Committee.*

