csba

Education Legal Alliance

Annual Report 2018

Dear Valued Member:

This report represents a summary of the activities of the Education Legal Alliance (ELA) in 2018. Since 1992, the ELA has been the preeminent legal voice for school districts and county offices of education, advocating for the interests of public education and winning verdicts in the courts. This has only been possible because of your generous support and engagement with the ELA.

In the past year, the ELA was unrelenting in its drive to provide legal leadership. We defended the interests of California's public schools in courtrooms across California — often when no one else would. The ELA brought the voice of local leaders and sound legal opinions to courtrooms throughout the state.

Our efforts resulted in numerous victories as we worked collectively to establish the conditions and resources needed to offer all students a quality education. For example, last April, the California Supreme Court approved CSBA's petition for review in *CSBA v. California*, where CSBA challenged statutory changes that would allow the annual elimination of up to $300 million of the state's mandated obligations to schools. The ELA also filed a lawsuit challenging AB 1825, a 2018-19 state Budget Trailer Bill allowing the state to change the Proposition 98 calculation and lower school funding by as much as $784 million in future years.

The ELA also filed numerous amicus briefs in support of school districts, COEs, and other local government agencies in a range of cases, including, charter school renewal in *Today's Fresh Start Charter School v. Inglewood Unified School District*, student expulsion in *M.N. v. Morgan Hill Unified School District*, educational residential placement in *M.S. v. Los Angeles Unified School District*, level 2 residential developer fees in *Salinas Union High School District v. Tanimura & Antle Fresh Food, Inc.*, disruptive parent letters in *Camfield v. Redondo Beach Unified School District* and level 1 developer fees in *Summerhill Winchester, LLC v. Campbell Union SD.* These cases, as well as the others contained in this report, represent the ELA's ongoing efforts on behalf of districts, local control, and public education.

Next year, we look forward to tackling a new set of challenges on behalf of local education agencies. Your continued support is vital to this effort and our ability to successfully advocate in the state and federal courts on behalf of California's six million K-12 students.

Thank you in advance for your support. If you have any questions about the ELA or its benefits, please contact Anita Ceballos at (800) 266-3382 or legal@csba.org.

Sincerely yours,

Vernon M. Billy
CEO & Executive Director,
California School Boards Association

Contents

Members with whom the ELA worked with in 2018

We fight better when we stand together

What is the Education Legal Alliance?

CSBA's Education Legal Alliance ("ELA") is a consortium of school districts, county offices of education, and Regional Occupational Centers/Programs that voluntarily joined together in 1992 to create a powerful force to pursue and defend a broad spectrum of statewide public education interests before state and federal courts, state agencies, and the legislature. The ELA initiates and supports legal activities in areas of statewide significance to all California schools. Working with school attorneys, the efforts of the ELA have proven highly effective in protecting the interests of schools and the students they serve. Potential matters are reviewed and approved by a broad-based steering committee of board members, superintendents, and education leaders. There is also a legal advisory committee of noted school law attorneys to help provide legal analysis and recommendations to the steering committee.

> "As California continues to lag in funding its students, schools and future, the ELA is challenging a misguided change to Proposition 98 that could lower future school funding by as much as $784 million. The ELA is a true champion in the fight for Full and Fair Funding and will continue to guard against attempts to weaken an already fragile financial situation for California's K-12 education system."
>
> — **Mike Walsh,** CSBA President and Board Member of Butte County Office of Education

The ELA is funded exclusively by contributions from its members, who are also members of CSBA.

What are the benefits of membership in the Education Legal Alliance?

- The ELA files amicus briefs and letters in court to support its members on legal issues of statewide importance.
- The ELA initiates litigation on various issues of statewide importance and often looks to its members to serve as co-plaintiffs in those cases.
- The ELA weighs in on legislation that impacts its members on issues of statewide importance.

Steering Committee

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CSBA President
Butte COE

Emma Turner, Vice Chair

CSBA President-elect
La Mesa-Spring Valley SD

Vernon M. Billy

CSBA CEO & Executive Director

Leighton Anderson

CSBA Delegate, Region 24
Whittier Union HSD

Peter Birdsall

CCSESA Executive Director

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Corona-Norco USD

Alisa MacAvoy

Director, Region 5
Redwood City ESD

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Vice President
School Services of California

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Timothy Taylor

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Elaine Yama-Garcia
Associate General Counsel

Bode Owoyele
Staff Attorney

Mike Ambrose
Staff Attorney

Anita Ceballos
Legal Specialist

Current Activities

Updates

Proposition 98 Rebenching

CSBA v. Cohen (2015) Case No. C083923 – California Court of Appeal, Third District

Member(s) Involved:

On behalf of all California School Districts and County Offices of Education

Summary:

This lawsuit alleges that the State's failure to "rebench" the Proposition 98 minimum guarantee for the 2015–16 budget is an unconstitutional manipulation of the guarantee and sets a dangerous precedent that must be challenged. Proposition 98 was approved by voters in 1988 to ensure a guaranteed minimum spending level each year for K-12 public schools and community colleges by providing them with a stable and predictable source of funding that grows with the economy and state General Fund revenues. State spending on childcare had always been included within the Proposition 98 minimum guarantee funding. In 2011, however, the State moved most of the funding for childcare outside of Proposition 98 for state budget purposes and adjusted or rebenched the minimum guarantee lower to reflect the removal. In the 2015–16 budget, the State added some childcare spending back into Proposition 98, used those funds to help meet the guarantee, but did not rebench the minimum guarantee calculation higher to reflect this additional education expense.

In October 2016, the Sacramento County Superior Court granted CSBA's Petition for Writ of Mandate, finding the State's failure to rebench the minimum guarantee was inconsistent with the statutory scheme established to implement the constitutional provisions of Proposition 98. The state appealed on January 6, 2017.

Status/Outcome:

The case is fully briefed and the parties await the scheduling of oral argument.

Mandate Redetermination and Offsetting Revenues

CSBA v. State of California (2013) Case No. S247266 – California Supreme Court

Member(s) Involved:

Butte County Office of Education; Castro Valley Unified School District; San Diego Unified School District; San Joaquin County Office of Education

> "The ELA delivers for its membership by not only taking on key issues but seeing results. The Alliance's effectiveness was displayed when the California Supreme Court approved CSBA's petition for review in a challenge against changes that would allow for the elimination of up to $300 million annually of the state's mandated obligation to schools."
>
> —**Emma Turner,** CSBA President-elect and board member at La Mesa-Spring Valley School District

Summary:

The ELA has challenged the statutory scheme regarding mandate reimbursement by arguing that the scheme as a whole frustrates the right of reimbursement under the California Constitution. Districts and county offices of education are being required to provide services without a reasonable expectation of timely reimbursement. Plus, the procedures for reimbursement impose an unreasonable burden on the right to reimbursement. The lawsuit explicitly challenges the statutes which allow the State to eliminate the reimbursement obligation by "redetermining" or reconsidering whether a mandate exists.

Because of subsequent changes in state law, the ELA has had to amend its complaint to challenge various new tactics that the State has devised to avoid reimbursing districts and county offices of education for their mandate claims. One particularly egregious tactic is to identify "offsetting revenues" as reimbursement for mandate claims. These offsetting revenues are revenues that districts and county offices of education would already receive; thus, districts receive no new or additional revenue under this tactic. The State has used offsetting revenues to avoid reimbursing districts and county offices of education for the Behavioral Intervention Plan and the High School Science Graduation Requirement mandates.

The trial court ruled against the ELA, holding that the State could use existing revenues as it saw fit, including identifying them as "offsetting revenues" for mandate reimbursement purposes. ELA appealed the superior court's ruling on CSBA's behalf in June 2016.

Status/Outcome:

After the court of appeal largely upheld the superior court's ruling and subsequently denied CSBA's Petition for Rehearing, the California Supreme Court granted CSBA's Petition for Review. The parties have completed briefing and are awaiting scheduling of oral argument. Amicus letters were filed in support of CSBA's Petition for Review by Clovis USD, Corcoran USD, Culver City USD, East Side Union HSD, El Monte Union HSD, Elk Grove USD, Kern HSD, Lassen COE, San Juan USD, California State Association of Counties, League of California Cities, and School Innovations & Achievement.

California Unemployment Insurance Appeals Board (CUIAB)

United Educators of San Francisco v. CA Unemployment Insurance Appeals Board (2015) Case No. S235903 – California Supreme Court

Member(s) Involved:

San Francisco Unified School District

Summary:

This case involves the interpretation of the California Unemployment Insurance Code section 1253.3(b) and (c), which state that unemployment benefits "are not payable to any individual … during the period between two successive academic years or terms … if there is a contract or a reasonable assurance that the individual will perform services for any educational institution in the second of the academic years or terms." In 2011, a group of 26 members of the United Educators of San Francisco (UESF) (substitute teachers and paraprofessional classified employees) applied for unemployment benefits for the period of time between May 27 and August 15. The superior court, based on the plain meaning of the statute, ruled that substitute teachers, 10-month classified employees, and school employees who do not work all 12 months are not eligible for unemployment benefits during the summer months when school is normally not in session, and rejected the union's argument that summer school session should be seen as part of an academic year or term.

The superior court also invalidated a previous California Unemployment Insurance Administrative Board decision which held that a school-term substitute employee who is available, eligible, and on a list to work during summer school is eligible for unemployment benefits if he/she is unable to get a summer school position.

ELA filed its amicus brief in November 2015, in support of San Francisco USD's favorable trial court ruling that working during the District's summer school session does not override the prohibition against receiving benefits per Unemployment Insurance Code 1253.3. On June 6, 2016, the appellate court affirmed the lower court's decision. In upholding the superior court's ruling and finding that summer school is not an "academic term" or "year," the appellate court cited to ELA's amicus brief, noting that the California Department of Education treats the traditional academic calendar to mean the period when school is regularly in session for all students, and does not include summer school. Justice Dondero wrote, "[w]e are not unsympathetic to the loss of wages incurred during periods of academic hiatus. However, in effect what the claimants in this case are requesting is that the government should provide them with a full year's income because they have agreed to work and be paid for only 41 weeks each year."

Status/Outcome:

The union's petition for review was granted by the California Supreme Court in September 2016. ELA filed its amicus brief on April 24, 2017. The case is fully briefed and parties continue to await oral argument.

Developer Fee Agreements

Burbank Housing Dev. v. Bellevue Union SD & City of Santa Rosa HSD (2016) Case No. A148801 – California Court of Appeal, First District

Member(s) Involved:

Bellevue Union School District; Santa Rosa City Schools

Summary:

This case is an appeal of a trial court decision related to Burbank Housing Development Corporation's ("Burbank Housing") legal challenge to two developer fee agreements that concern property owned by Burbank Housing. The fee agreements were entered into and recorded in 1996 between the prior property owner and each school district. After Burbank Housing purchased the property in October 2007, it challenged the agreements as requiring payment of developer fees over and above what the statutory scheme permits.

The trial court agreed with Burbank Housing, holding that the agreements were an impermissible attempt by the districts to supplement statutorily authorized fees, and ordering them to cease enforcement of the agreements and return any developer fees collected in excess of the fees authorized by state law. The trial court further held that the fee agreements were not exempted from the preemption provisions in Government Code Section 65995.

The districts argued on appeal that the trial court incorrectly treated these voluntary agreements as if they were involuntary fees imposed by the district on an unwilling landowner. The ELA filed an amicus brief on March 27, 2017, in support of the districts.

Status/Outcome:

In an unpublished opinion, the court of appeal affirmed the trial court's decision, concluding that the agreements between the prior property owner and school districts for school impact fees exceeding those authorized by the Government Code are invalid. A Request for Publication of the opinion was denied on October 10, 2018.

Developer Fees

Summerhill Winchester, LLC v. Campbell Union School District (2017) Case No. H043253 – California Court of Appeal, Sixth District

Member(s) Involved:

Campbell Union School District

Summary:

In this case, the trial court ordered Campbell Union School District to refund the $499,967.96 in fees paid by the developer of a condominium project in the district, including $101,403.21 in interest. The trial court found that: (1) the fee study's statement that "in excess of" 133 homes were anticipated to be built was not an adequate methodology to describe the total amount of new housing needed, (2) the fee study's estimate that the number of students to be generated by the development was "in excess of" 67 students was not adequate methodology to estimate the number of students generated by the new development, and (3) the fee study did not adequately calculate the costs to house new students generated by the development because the costs were not based on actual construction plans for new school facilities. The District argued that the trial court's decision is contrary to existing case law with respect to the use of projections for housing units expected, students generated, and estimates of facilities costs.

> "Knowing that the ELA has the backs of students and educators up and down the state gives board members like me peace of mind that our work to enhance our districts and schools is strongly supported on the legal level."
>
> —**Tom Gemetti,** *Board President of Campbell Union School District.*

The ELA filed an amicus brief in support of the district on June 26, 2017.

Status/Outcome:

The case was argued and submitted on October 2, 2018. The parties await the court's decision.

Deferred Action for Childhood Arrivals (DACA)

University of California v. U.S. Department of Homeland Security **(and related cases) (2017) Case No. 17-cv-05211-WHA – Federal District Court, Northern District**

Member(s) Involved:

On behalf of all California School Districts and County Offices of Education

Summary:

Four lawsuits challenging the rescission of Deferred Action for Childhood Arrivals ("DACA") are proceeding together in the Northern District of California. The DACA program was implemented in 2012 and offered work authorization and a renewable two-year reprieve from deportation to unauthorized immigrants who were brought to the United States as children and met specific eligibility requirements. The Trump Administration announced in September 2017 that it will end the DACA program. There are 222,795 DACA recipients in California, more than a quarter of the program's total. One-third of all DACA recipients are enrolled in high school, one-fifth are enrolled in college, and one-fourth are enrolled in college and working at the same time. According to the Migration Policy Institute, approximately 5,000 teachers in California are DACA recipients. CSBA and the ELA were asked to sign onto an amicus brief in the consolidated DACA lawsuits identifying the challenges the rescission of DACA may create for students, schools, and governing boards in California. On November 1, 2017, an amicus brief was filed on behalf of CSBA along with NEA, ACSA, CTA, Berkeley USD, Moreno Valley USD, San Diego USD, West Contra Costa USD, Los Angeles County Board of Education, Los Angeles USD, Oakland USD, Sacramento City USD, and other associations. In January 2018, the district court issued an injunction blocking the implementation of the Trump Administration's decision, which prompted the Administration to petition the U.S. Supreme Court to bypass the appellate court and directly review the granting of the injunction.

Status/Outcome:

The U.S. Supreme Court denied the federal government's request for direct review, thereby subjecting the case to the normal appeals process. The case is now before the U.S. Court of Appeals for the Ninth Circuit, and CSBA/ELA joined an amicus brief filed before that court on March 20, 2018.

Duty of Care Liability

Isabella Sanchez, a minor, et al., v. San Bernardino City Unified School District (2017) Case No.E065881 – California Court of Appeal, Fourth District

Member(s) Involved:

San Bernardino City Unified School District

Summary:

This case stems from a tragic event, where a child crossing the street was struck by a car and severely injured. The child was walking to her school bus stop with her supervising neighbor when the child tried to cross the street mid-block and was struck by a car. The street had an intersection controlled by a traffic signal and a crosswalk. The parents of the child filed a lawsuit against the school district, among others, alleging a failure of a duty of care by the school district.

San Bernardino City Unified School District successfully moved for summary judgment based on the immunity afforded by Education Code section 44808 and they successfully defended Appellants' motion for a new trial. Education Code section 44808 provides immunity from liability as this was an off-campus injury, before the start of the school day, and no "enactment" establishes a duty to immediately and directly supervise the child under the facts of this case.

Appellants appealed the summary judgment motion, asserting that triable issues of material fact exist for a jury to decide as to whether the child should have been under the immediate and direct supervision of the district at the time of her injuries. The ELA filed an amicus brief on October 17, 2017, supporting the district's successful summary judgment decision by the lower court that held the district did not have a duty of care to the child as the child was not under the immediate and direct supervision of the district at the time of her injuries.

Status/Outcome:

After the parties filed a stipulation for dismissal of the appeal, the appeal was dismissed on February 13, 2018.

Current Activities

New Cases

Education Minimum Funding Guarantee

CSBA v. Cohen (2018) Case No. 43-2018-80002950 – Sacramento County Superior Court

Member(s) Involved:

On behalf of all California School Districts and County Offices of Education

Summary:

In August 2018, CSBA and its ELA filed a lawsuit challenging the State's efforts to manipulate the constitutional formula for calculating the minimum education funding guarantee in a manner that will result in less funding for K-14 schools.

The lawsuit specifically challenges provisions of Assembly Bill 1825, a 2018–19 budget trailer bill that would change how the Proposition 98 ("Prop 98") minimum education funding guarantee is calculated. Under AB 1825, the State will be able to provide K-14 schools with less money than they would otherwise legally receive.

AB 1825 would allow the state to reduce education funding in future years by up to 1 percent of the prior year's Prop 98 guarantee. Based on the current year, this means that ongoing school funding could be lowered in future years by as much as $784 million.

Status/Outcome:

The Writ of Mandate is scheduled for hearing on July 12, 2019.

Charter School Renewal

Today's Fresh Start Charter School v. Inglewood Unified School District (2018) 20 Cal.App. 5th 276

Member(s) Involved:

Inglewood Unified School District

Summary:

Today's Fresh Start Charter School ("Today's Fresh Start") submitted a petition for "Renewal and Material Revision" to Inglewood Unified School District, seeking to renew and expand operation of its charter school and to open a second school located outside of the district's boundaries.

The district did not act within 60 days of its receipt of the petition for renewal, thus the renewal request was deemed automatically approved, per Title 5 of the California Code of Regulations Section 11966.4. The district ultimately issued a resolution denying the material revision. The charter school filed a lawsuit claiming that its material revision petition should also have been deemed automatically approved pursuant to California Code of Regulations Section 11966.4 which "deems approved" any "petition for renewal" that is not acted on within 60 days. The trial court ruled against the charter school, holding that the charter school's request for material revision was not a "petition for renewal" covered by California Code of Regulations Section 11966.4.

Today's Fresh Start filed an appeal contending that, like its renewal petition, its material revision petition should have been deemed automatically approved for the district's failure to act within 60 days. The main question before the court of appeal was whether a request to add a new site must be made through the material revision process or can be made under a charter renewal.

The ELA filed an amicus brief in support of the district. The court of appeal affirmed the trial court's decision that only the renewal petition could be deemed automatically approved. The decision was certified for publication.

Status/Outcome:

After a number of requests were filed to de-publish the appellate decision, and the ELA's letter opposing the depublication requests, the California Supreme Court denied the requests for depublication of the appellate opinion on May 9, 2018. This case in favor of the district was published at *Today's Fresh Start Charter School v. Inglewood Unified School District*, (2018) 20 Cal.App. 5th 276.

Commission on Professional Competence

Riverbank Unified School District v. CPC (2017) Case No. S245216 – California Supreme Court

Member(s) Involved:

Riverbank Unified School District

Summary:

This case involves questions of fairness in hearings before the Commission on Professional Competence ("CPC"). Riverbank Unified School District initiated termination proceedings against a teacher (resource specialist) after allegations arose that he inappropriately touched at least one of his students. In the termination hearing, the district was prohibited from cross examining the witnesses who testified to the teacher's character and from presenting character rebuttal evidence. The CPC found the teacher credible without properly explaining its credibility determinations and without providing both sides an equal opportunity to present evidence regarding credibility, and reinstated employment of the teacher. The district appealed, and the superior court ruled in favor of the district, finding that the CPC denied the district a fair hearing and that the weight of the evidence did not support the CPC's decision.

On appeal to the court of appeal, the teacher argued that the superior court failed to give proper deference to the CPC's credibility determination. The appellate court, in an unpublished opinion, found in favor of the teacher.

The district filed a Petition for Review to the California Supreme Court. The ELA filed an amicus letter in support of the district's Petition for Review, noting that credibility determinations are paramount in teacher termination cases involving allegations of inappropriate touching of a student, that fair hearings are crucial, and that the CPC's credibility determinations in the case were insufficiently explained.

Status/Outcome:

On January 17, 2018, the Supreme Court denied the Petition for Review. This case remains unpublished.

State Board of Education Charter Appeal Process

CSBA/ELA and San Jose USD v. State Board of Education (Promise Academy) (2018) Case No. C087996 – California Court of Appeal, Third District

Member(s) Involved:

San Jose Unified School District

Summary:

After a charter petition was denied by San Jose Unified School District and not approved by the Santa Clara County Board of Education, the State Board of Education ("SBE") approved the petition on appeal. The petition approved by SBE was materially different from the petition submitted to the district and the Santa Clara County Board, which is beyond the appeal process contemplated by the Charter Schools Act. Nothing in the statute or the regulations authorizes the SBE to make material revisions to the charter document in order to approve — or deny — the charter petition on appeal. SBE is limited to consideration of a renewal petition as denied by the governing boards. In this case, SBE approved the charter petition in a materially different form from the petition that was presented to the district.

> "While the Charter Schools Act of 1992 creates opportunities for students and families, it also creates significant challenges for governing boards. San José Unified is truly appreciative of CSBA and its Education Legal Alliance's partnership in seeking clarity on the role of the local governing board, the county board of education, and the state board of education on charter school decisions."
>
> —**Susan Ellenberg,** *Board President of San José Unified School District*

CSBA, its ELA, and San Jose Unified School District filed a Writ of Mandate and Complaint with the Sacramento County Superior Court in March 2018. After conducting a hearing in June, the Superior Court denied CSBA/ELA's Petition for Writ of Mandate, finding that Education Code section 47605 contained express language that the "establishment of charter schools should be encouraged." The court ruled that SBE did not violate the law by modifying the charter petition as part of its approval of the Promise Academy charter school.

Status/Outcome:

CSBA/ELA and San Jose USD filed an appeal of the decision on September 27, 2018.

Expulsion

M.N. v. Morgan Hill Unified School District (2018) 20 Cal.App. 5th 607

Member(s) Involved:

Morgan Hill Unified School District

Summary:

On January 24, the court of appeal issued an unpublished opinion in favor of Morgan Hill Unified School District after the student appealed the trial court's ruling upholding his expulsion for sexual battery, which requires a mandatory expulsion of the student upon a finding that the student committed the prohibited act. If published, the appellate court opinion would provide helpful guidance to school districts in addressing the nature of non-hearsay evidence necessary to support an expulsion under the standards specified in Education Code section 48918, provide clarity as to the applicable standard of review under Code of Civil Procedure section 1094.5 when a student challenges an expulsion decision, and contain helpful discussion as to how the expulsion process and its evidentiary standards operate in areas for which no published appellate guidance exists to date. The ELA filed a Request for Publication of the opinion on February 13, 2018.

Status/Outcome:

The court of appeal ordered the opinion published on February 20, 2018. The opinion is available at *M.N. v. Morgan Hill Unified School District,* (2018) 20 Cal.App. 5th 607.

Special Education – Educational Residential Placement

M.S. v. Los Angeles Unified School District (2016) Case No. 16-56472 – Federal Court of Appeals, Ninth Circuit

Member(s) Involved:

Los Angeles Unified School District

Summary:

This case involves the determination of the obligations of a school district related to a special education student placed in a residential facility.

After several years of being placed in a court ordered residential facility funded by the Los Angeles County Department of Children and Family Services ("DCFS"), and provided educational services under an Individualized Education Program ("IEP") established by Los Angeles Unified School District, the student ("M.S.") challenged the IEP and filed a due process complaint alleging that the district denied her a Free Appropriate Public Education ("FAPE") by failing to discuss the need for or offer her a residential placement for educational purposes. At the Office of Administrative Hearings ("OAH") hearing, the Administrative Law Judge ("ALJ") concluded that the district had no obligation to offer an educational residential placement in the IEP when M.S. was already receiving an appropriate residential placement through DCFS.

On appeal, the federal district court found that the district had a separate and independent obligation to consider whether M.S. needed a residential placement for educational reasons.

Los Angeles Unified School District appealed the district court decision to the Ninth Circuit Court of Appeals. The ELA filed an amicus brief on May 7, 2018, in support of the district's position that it has no obligation to offer an educational residential placement in the IEP when a student is already receiving an appropriate residential placement through the County.

Status/Outcome:

The parties await oral argument, which has been set for December 4, 2018.

Proposition 39 – Charter Facilities

Ross Valley School District v. Superior Court (Ross Valley Charter School) (2018) Case No. A154479 – California Court of Appeal, First District

Member(s) Involved:

Ross Valley School District

Summary:

In this case, the school district was sued by the local charter school — Ross Valley Charter — alleging violation of Proposition 39 (the requirement that school districts make available to charter schools meeting certain criteria reasonably equivalent facilities that will sufficiently accommodate all of the charter's in-district students). The district filed a motion under Code of Civil Procedure 394, which requires a case to be transferred out of the county when two public entities are parties. The charter school asserted it is not a public entity and the trial court agreed. Trial courts facing this question have produced inconsistent results, and charter schools have argued both that they are public and private entities, depending on the statute. The charter school in this case, in fact, claimed to be a public agency under Government Code section 6103(a) in order to exempt itself from court filing fees, while claiming not to be a public entity under CCP section 394. While transferring a case to another county may not be a critical issue of statewide importance for most school districts, the motion was an opportunity to advocate at the appellate court level that charter schools may not choose under which laws they should be considered public entities and under which laws they should be considered private entities.

On June 8, 2018, the ELA filed an amicus letter in support of the district's Petition for Writ of Mandate, and its argument that a charter school should be considered a public entity under CCP section 394.

Status/Outcome:

On July 5, 2018, the superior court vacated its own order denying the district's motion for transfer of venue to Sonoma County Superior Court, thereby resulting in the district's appellate writ being dismissed as moot. The appellate court had prepared an alternative writ directing the superior court to correct its ruling if the superior court did not vacate its order, noting the appellate court viewed the charter school as a local agency under CCP section 394.

Developer Fees

Salinas Union High School District v. Tanimura & Antle Fresh Food, Inc. (2017) Case No. H045470 – California Court of Appeal, Sixth District

Member(s) Involved:

Salinas Union High School District

Summary:

Salinas Union High School District appealed a superior court ruling that the builder of an agricultural housing project was not required to pay the Level 2 residential developer fees to the school district because the housing project was targeted by the developer and determined by the county board to be for adults only and would therefore not impact the school district. As framed by the superior court, the question is whether the school district may properly impose Level 2 developer fees on a project when that project will only house adults, the occupation of the housing project by dependents is prohibited by the terms of the County's approval, and the School Facility Needs Assessment does not address that the project is meant for adults only. The district, on the other hand, frames the question as whether a developer can avoid paying school impact fees by professing an intention to exclude families from a new residential development, even if the exclusion of families is potentially discriminatory and illegal. If allowed to stand, there is concern the trial court's ruling may encourage residential developers around the state to bar or limit access to families and could impact school districts' ability to impose fees on projects that developers argue will generate fewer than average students.

> "In the past year, the ELA stood tall and provided crucial legal support on a number of issues facing local educational agencies. The Alliance filed numerous amicus briefs in support of districts, county offices of education and other agencies that proved to be critical in their respective cases, which ranged in issues from charter school renewals to developer fees"
>
> —**Loren Soukup,** *Senior Associate General Counsel for School & College Legal Services of California, and President-elect of the California Council of School Attorneys*

On June 18, 2018, the ELA filed an amicus brief in support of the district's assessment of Level 2 developer fees on a new housing development within the district's boundaries.

Status/Outcome:

The case is fully briefed and the parties await the scheduling of oral argument.

Disruptive Parent Letters

Camfield v. Redondo Beach Unified School District (2017) Case No. 17-56072 – Federal Court of Appeals, Ninth Circuit

Member(s) Involved:

Redondo Beach Unified School District

Summary:

This case poses the question of whether a school can restrict parent access to campus through a disruptive parent letter, without giving parents more formalized and expanded due process rights before the restriction may be imposed. In this case, parents were sent "disruptive parent letters" that limited their campus access without prior permission from the principal. The parents had gotten in arguments with other parents at the school, swore at staff when upset about their student's placement with a certain teacher, swore at the principal, and made staff/teachers uncomfortable. The parents sued after their child matriculated from the school. The parents alleged a number of violations, including disability discrimination under Section 504 and the Americans with Disabilities Act (ADA); violation of parental rights under Education Code, section 51101; violations of the constitutional rights to free speech, due process, and equal protection; and violation of the Bane Act, Civil Code, section 52.1. The district court dismissed many of the claims and ruled on summary judgement in favor of the school district on the remaining issues. The parents have appealed to the Ninth Circuit Court of Appeals.

The ELA filed an amicus brief on July 5, 2018, supporting the district's ability to use a "disruptive parent letter" to limit campus access in order to keep a safe and non-disruptive learning environment at the school, without providing more formalized and expanded due process rights.

Status/Outcome:

This case is fully briefed and the parties await the scheduling of oral argument.

FPPC Regulation

California State Association of Counties & CSBA v. Fair Political Practices Commission (FPPC) **(2018) Case No. BS174653 – Los Angeles County Superior Court**

Member(s) Involved:

On behalf of all California School Districts and County Offices of Education

Summary:

CSBA and its ELA have teamed up with the California State Association of Counties ("CSAC") to sue the Fair Political Practices Commission ("FPPC"), the agency responsible for the enforcement of the Political Reform Act ("PRA"), which regulates campaign financing, conflicts of interest, lobbying, and government ethics. The lawsuit challenges the FPPC's adoption and enforcement of regulations which exceed the Commission's authority. Local governments cannot spend public monies to engage in campaign communications that expressly advocate for or against a ballot measure, but can spend public funds to inform and educate the public about an upcoming ballot measure. FPPC Regulation section 18420.1 was implemented after the *Vargas v. City of Salinas* case in 2009, and makes television, electronic media, and radio spots *per se* violations of the prohibition on spending public dollars on advocacy, regardless of whether the communication is strictly informational. CSBA attempted to get the FPPC to rescind the regulation by sending an opposition letter to FPPC in 2009 and formally petitioning for rulemaking in 2010, and CSBA was poised to seek redress in the courts but refrained when the then FPPC Chair indicated that FPPC staff will not include the regulation in its enforcement efforts. Unfortunately, the FPPC has recently begun enforcing the regulations, and the FPPC enforcement may in the future impact school boards or county offices of education that place measures on their local ballots and provide informational communications about the measures.

CSAC and CSBA/ELA filed a lawsuit on August 3, 2018, challenging the FPPC regulation regarding such campaign activity being banned regardless of the content of the message.

Status/Outcome:

Parties are in the early stages of briefing the case.

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