Winter 2007/08

The California School Board Association's
Education Legal Alliance

Alliance REPORT

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 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, 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 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.

Mandated Cost Lawsuit

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

Issue:

Is a statute constitutional that prohibits mandate reimbursement to a local agency for the costs of performing duties necessary to implement, reasonably within the scope of, or expressly included, in a ballot measure that was approved by the voters?

Background:

The basis of the lawsuit is the approval of AB 138 (Statutes 2005, Chapter 138) by the Legislature, a statute enacted as part of the state's concentrated strategy to terminate its constitutional obligation to reimburse local governments for costs associated with providing mandated services. For many years, the Commission on State Mandates had determined that three state mandated programs were reimbursable mandates: the School

Accountability Report Card, Mandate Reimbursement Process and certain Brown Act requirements. AB 138 changed COSM's determination by requiring the COSM to either vacate or reconsider its prior decisions if the mandate is "necessary to implement" or "reasonably within the scope of" an expressly stated voter-approved mandate. Thus, in accordance with the Legislature's directive, COSM reversed and set aside its prior determinations in the three claim areas that are the basis of this litigation.

The Alliance filed a lawsuit challenging AB 138 and the actions of the COSM. In March, the trial court ruled in favor of the Alliance and held that AB 138 was an unconstitutional attempt by the Legislature to avoid reimbursing districts for mandated costs. While it has always been the case that mandates added by the voters through a ballot measure are not reimbursable, mandates added by the Legislature, under the guise of being "necessary to implement" the ballot measure, must be reimbursed. Local districts rely on the decisions of the COSM regarding the extent of reimbursements, thus the Legislature's attempt to retroactively deny reimbursement was unconstitutional.

Case Status/Recent Activities:

An appeal has been filed in this case by the COSM, the state and the Department of Finance, which intervened in the case, and the State Controller. The Alliance and the other petitioners are cross appealing, questioning whether or not the underlying statute that denies reimbursement of voter approved mandates is constitutional. The appeal will not be resolved until mid-2008 and it is reasonable to expect that the losing side will seek review by California Supreme Court.

Mandated Cost Claim Audits by the State Controller's Office

Clovis USD et al. v. Controller/Sacramento County Superior Court

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?

Background:

Since 2002, the SCO has audited reimbursable state mandate claims filed by local education agencies. A number of problems have arisen with the auditing procedures relied upon by the SCO, which have resulted in a total denial or substantial reduction of many claims. Most typically, the problem is a result of the SCO's demand for supporting data for staff time. A two-part "group" challenge of the new procedures is underway regarding: (1) the filing of incorrect reduction claims with the COSM and (2) the filing of a lawsuit against the SCO, led by Clovis USD. The majority of the issues with SCO procedures have been in the following mandate programs: collective bargaining, school district of choice, intra-district attendance, notification of truancy and graduation requirements. The Alliance is providing financial assistance to help the districts that filed suit defray the costs of their lawsuit against the SCO.

Recent Activities:

The lawsuit is in the discovery stage (document demands have been made and depositions have been taken). The depositions are going very well and it is clear that the state has no standards for these audits. Trial has been set for February 2008.

Behavioral Intervention Plans

Issue:

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

Background:

In 1990, legislation was enacted requiring the State Board of Education to adopt regulations concerning behavioral intervention plans for pupils who exhibit serious behavior problems that interfere with their education. In 2000, the COSM adopted its Statement of Decision finding that the state legislation, and SBE regulations implementing the legislation, imposed a reimbursable state-mandate. Proposed Parameters and Guidelines for the mandate were filed, but the COSM took no action on those proposed Parameters and Guidelines, thus there was no process for districts to claim reimbursement. In 2003, the DOF filed a lawsuit challenging the COSM's Statement of Decision finding a reimbursable mandate. However, that lawsuit has been stayed pending efforts to negotiate a settlement.

Case Status/Recent Activities:

The state requirements for behavioral intervention plans are detailed and costly, thus it is important to districts that this mandate is reimbursable. It is believed that districts are being required to implement an increasing number of behavioral intervention plans as more students are identified as eligible for special education. Settlement efforts have stalled to this point. The Alliance is assisting the claimants in the negotiations process and will likely provide further assistance should this issue be litigated.

Statewide Benefit Charter Schools

CSBA/CTA/ACSA/Stockton USD v. SBE/Sacramento County Superior Court

Issue:

Must the SBE first consider whether a proposed statewide benefit charter presents a unique circumstance warranting a statewide charter and whether the charter can be accommodated at the local level before granting the charter statewide?

Background:

Over the last year, CSBA has been concerned about the SBE's process for granting statewide benefit charters. AB 1994 (Statutes of 2002) added Education Code section 47605.8 providing for the creation of statewide benefit charter schools, which are able to bypass the geographical limitations on charter schools and operate at multiple sites throughout the state. The charter petition comes directly to the SBE and may be granted only when the SBE makes a finding that the charter will provide a statewide benefit and that the services cannot be provided by a charter operating in only one district or county.

It is the opinion of the Alliance that the SBE is acting contrary to law by approving statewide benefit charters without first considering whether the charters could be accommodated by a local district or county office of education, and without requiring a petitioner to produce evidence upon which a finding of unique circumstances that would justify whether or not the charter is of statewide benefit.

Recent Activities:

Although legislation was passed this year (AB 20) requiring the SBE in the future to base its finding of unique circumstances on "substantial evidence," this new legislation does not impact previously-approved statewide benefit charters. Therefore, CSBA and the Alliance, CTA and ACSA have filed litigation to overturn the SBE approval of a recently granted statewide charter and requested a court order directing the SBE to close the two schools that have been opened at the end of the 2007-08 school year.

Proposition 39 Charter School Facilities Regulations

State Board of Education

Issue:

What is the extent of SBE's authority in developing regulations regarding Proposition 39 facility requests by charter schools?

Background:

Since the passage of Proposition 39, there have been four court decisions relating to charter school facilities issues. CSBA and the Alliance learned of an effort by charter school interests and the CDE staff to develop proposed revisions to the existing regulations to incorporate the court decisions and to reconsider regulations that would create a dispute resolution procedure. The SBE began the formal rule-making process in January 2007 and CSBA and the Alliance filed a formal letter challenging several of the proposed regulations.

Recent Activities:

The SBE adopted the proposed regulations at its May meeting and submitted them to the DOF for a determination of the fiscal impact of the proposed regulations, if any. In late August, the SBE withdrew the regulations, most likely because the Office of Administrative Law expressed concerns about their legal validity. As a result, the SBE was required to amend the regulations, have another public hearing and have the SBE readopt them by its January meeting. If the SBE does not readopt the regulations by its January meeting then the one-year rulemaking calendar has expired and the process must begin again.

Conflict of Interest Regulations for Charter Board Members

State Board of Education

Issue:

Are charter school board members subject to the same conflict of interest rules that apply to school district and county office board members?

Background:

At its May meeting, the SBE approved commencement of the rulemaking process for new charter school board member conflict of interest regulations. The SBE's proposed regulations apply less stringent non-profit benefit corporation standards of conduct to charter school board members. For example, the proposed regulations allow 49 percent of the charter board's membership to have a financial interest in the decision.

CSBA objected to the proposed regulations on the grounds that they are unnecessary because members of charter school boards are subject to the same conflict of interest rules that apply to school district and county board members. CSBA believes that the SBE has no authority to adopt conflict of interest regulations and that such authority lies exclusively with the Fair Political Practices Commission, which has issued several opinions that charter board members are subject to the Political Reform Act.

Recent Activities:

At its July meeting, members of the SBE asked staff to provide further information, including a comparison of the proposed regulations with current conflict of interest laws, and delayed action until its September meeting. However, in early September, California Department of Education staff indicated that they would be unable to complete their research in time for the September meeting, thus the regulations will not be considered until the January SBE meeting, at the earliest.

UPDATE ON NEW ALLIANCE CASES

Attorneys' Fees in Settlement of a Special Education Lawsuit

M.D. and S.D v. OAH and Saddleback Valley USD/U.S. District Court

Issue:

Are attorneys' fees available to a parent who accepts a school district's written offer of settlement 10 days prior to the start of a due process hearing under the Individuals with Disabilities Education Act?

What this case is about:

A due process hearing was scheduled regarding the Plaintiff's claim for reimbursement of their child's private pre-school placement and other costs for expenses incurred for assessment. Plaintiffs "unconditionally" accepted the offer in writing on the next day. At the same time, Plaintiff's counsel wrote to the Office of Administrative Hearings requesting that OAH "enter judgment" pursuant to the terms of the settlement. OAH declined the request to "enter judgment" and dismissed the case.

Plaintiffs allege that the district's subsequently proposed written settlement agreement contained conditions not set forth in the district's offer, including a release of attorney's fees. Plaintiff's then demanded an additional $65,000 in attorneys' fees, above the settlement amount, which the district refused to pay. The current litigation in federal court is an appeal of OAH's refusal to "enter judgment" and an action for "administrative attorneys' fees." The district contends this action is not about enforcing the terms of the settlement and that the board had approved the settlement and the district was willing to provide a check of $42,500.

Why this case is important:

This case is of statewide significance in that no federal court has ruled whether parents can recover attorneys' fees for accepting a 10-day offer of settlement. A ruling in favor of the district would provide districts with "powerful precedent and security" against the fear that parties would demand further attorneys' fees after settlement had been reached.

Role of the Alliance:

The Alliance provided financial assistance to the district to help reimburse for trial court legal expenses and will file an amicus brief in support of the district in the Ninth Circuit Court of Appeal should an appeal be undertaken.

Right of Student to Attend a Protest During the School Day

Corales et al. v Bennett, Kinley et al. (Ontario-Montclair School District)/U.S. 9th Circuit Court of Appeal

Issue:

Is a middle school student's act of leaving school without permission or supervision of parents or school authorities to attend a protest during the school day expressive conduct protected by First Amendment free speech rights?

What this case is about:

Three middle school students left school, without permission of school authorities or their parents, in order to participate in a walkout at or near the district high school to protest immigration reform legislation. Two days later the school's assistant principal called the students into his office. He lectured the students about their unexcused absence and the students were punished by being prohibited from attending an end-of-the-year school trip to an amusement park or a dance.

After the meeting, the students attended classes for the remainder of the day. When the Plaintiff's son arrived home, he called his mother and told her that he had been trouble with the assistant principal and lost a privilege. When his mother arrived home, she found that her son had committed suicide. The parents brought suit again the district alleging violation of their son's First Amendment free speech right, due process rights, and rights under the Equal Protection Clause. The parents claimed that their son was disciplined for exercising his First Amendment right to protest immigrant rights while the district claimed that discipline was imposed solely because the students were truant.

The court determined that there was a triable issue of fact as to whether the students were engaged in expressive conduct, since the district had sent an e-mail to staff three days before the walkout advising them that protests might be occurring. However, the court held that the students' conduct was not protected since the district had an obligation to take appropriate action to ensure student safety, even if such an action interfered with the students' ability to express themselves under the First Amendment.

Why this case is important:

This case is of statewide impact since there is no case law directly on point and it is important for districts to retain the right to discipline students for truancy in order to prevent substantial disruption, even when weighed against the students' First Amendment rights.

Role of the Alliance:

The Alliance has filed an amicus brief in support of the district.

Distribution of Educational Revenue Augmentation Funds

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

Issue:

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

What this case is about:

ERAF funds increases the share of local property taxes paid to schools, in turn decreasing the amount of required state payments under Proposition 98. Subsequent legislation was enacted to reduce the adverse impact of Redevelopment Agency projects on the property tax revenue of the schools and other local governmental entities entitled to property taxes. When a redevelopment project occurs, the property comes off the general tax roll and the RDA then receives the taxes subsequently assessed. A portion of the property tax revenue received by the RDA is redirected to the "affected taxing entities." This money is to be split among the "affected taxing entities" in "proportion to the percentage share of property taxes each affected taxing entity ... receives."

The lack of explicit direction as to the treatment of ERAF payments has led to a split in the method of calculating payments by county auditors and controllers. Some counties include ERAF payments to school districts in determining the school districts' percentage of property taxes received for purposes of calculating RDA tax increment entitlement. Other counties exclude ERAF payments in calculating school districts' percentage share of property taxes received. These counties treat the ERAF payments as belonging to non-school entities. LAUSD believes the Auditor/Controller of the County of Los Angeles, as well as several other counties throughout the state, has been allocating these revenues incorrectly by excluding ERAF funds from the calculation. As a result, schools in Los Angeles County, and elsewhere, are receiving approximately 18 percent less redevelopment tax increment than they are entitled to. Depending on the rate at which property appreciates and the number and extent of redevelopment projects, it is believed LAUSD will be underpaid by as much as $2.4 billion over the next forty-five years (anticipated life of an RDA project) should the county continue its current allocation practices. Other affected school districts will be disadvantaged proportionately.

Why this case is important:

Approximately 56 percent of the RDA pass-through payments to schools can be used for facilities and are exempt from a school's revenue limit. Therefore it is important to maximize pass-through payments from RDAs by having ERAF funds included as "taxes received" by school districts. From the perspective of CSBA/Alliance the importance of this case is not just the amount of money involved, but an attempt to make a favorable court decision for LAUSD available to school districts in other counties where their auditor/controller followed the practices relied upon in LA County.

Role of the Alliance:

The interest of the Alliance is to assist LAUSD in achieving victory and to extend that victory to all other impacted school districts. The Alliance will file an amicus brief, if allowed by the trial court, and retain legal counsel to explore possible causes of action CSBA and the Alliance could file to bring statewide resolution to this issue.

RULINGS/SETTLEMENTS IN ACTIVE ALLIANCE CASES

Use of District Mailboxes for Campaign Purposes

San Leandro Teachers Association, CTA/NEA; California Teachers Association v. San Leandro Unified School District/Court of Appeal

Issue:

Does the Education Code require that a district prohibit the local association and others from using school mailboxes to distribute political material?

Case Status:

In an important victory for school districts, the appellate court has held that districts may adopt reasonable regulations limiting the local teacher's association from placing political material in the school mailboxes. The association-distributed newsletter contained information about the association's campaign activities to elect two candidates it had endorsed for the school board election as well as information on what some members were doing to assist in the campaign. Production of the newsletters was done at the association's expense and carried markings indicating that the material was a work of the association and not sponsored by the district.

The district advised the president of the union that, consistent with district policy, the union was prohibited by the Education Code from using district mail facilities to distribute materials that contained political endorsements. The superior court agreed with the union that the district's interpretation of the Education Code was unconstitutional and that school mailboxes do not constitute "funds, services, supplies, or equipment" within the meaning of the Education Code.

The appellate court overruled the trial court and held that the internal mailbox system is "equipment" and that districts are prohibited from using district resources in furtherance of political activities regardless of the identity of the actor or the cost to the district. The court also analyzed the relationship of the Education Code to the Educational Employment Relations Act, which allows employee organizations the right of access to use mailboxes and other means of communication, subject to reasonable regulation, for the purpose of exercising employee rights.

This ruling confirms a district's obligation to adopt reasonable regulations limiting a district's involvement in political activity and restricting access to internal district mailboxes to non-political uses and would likely apply to other district communication systems, such as telephone and email, as well as district equipment, such as a photocopier. The teacher's association has appealed to the California Supreme Court and that court accepted review. The Alliance will file another amicus brief in support of the district at the Supreme Court.

Eligibility for Special Education Services

R.B. by F.B. v. Napa Valley USD/U.S. 9th Circuit Court of Appeal

Issue:

Have the criteria for Individuals with Disabilities Education Act eligibility due to an emotional disturbance or other health impairment been met? If so, do the facts support the provision of services given the findings that the student's educational performance was not affected?

Case Status:

The 9th Circuit ruled in favor of the district and held that the IDEA does not guarantee a "potential-maximizing" education for an individual child, and that the disability needs to adversely affect educational performance for a child to qualify for special education services. The Alliance filed an amicus brief in support of the district.

Student R.B. had neurological health issues and subsequently displayed severe emotional symptoms and was diagnosed with Attention Deficit Hyperactivity Disorder. Though she initially was found to be eligible for special education services, ultimately the district concluded that she no longer qualified and instead developed a behavioral intervention plan under Section 504. R.B.'s parents agreed with this change.

Although she had occasional behavioral problems in school, she consistently received high grades and made appropriate progress on the state standardized tests; also making the school's honor roll. During 5th grade, her behavior deteriorated, so her mother sought an independent assessment and unilaterally placed her in residential treatment. The district determined again that her emotional problems were not affecting her educational performance. The family claimed that they were entitled to reimbursement for the cost of the private assessment and private placement.

The court analyzed whether R.B. qualified for special education as a child with a "serious emotional disturbance" pursuant to state and federal law and found that her inappropriate behavior did not meet the definition because it did not affect her educational performance. The parents argued that R.B.'s grades (A's, B's, and one D and average achievement test scores) should not be a "litmus test" and that the court should instead consider whether her performance was below her ability. The 9th Circuit disagreed and held that the IDEA does not guarantee the "absolutely best" or "potential-maximizing" education, but rather guaranteed a "basic floor of opportunity."

OTHER ACTIVE CASES

The Alliance has filed or will file amicus briefs in the following cases and is awaiting a court decision:

Board Censure Resolution

Californians Aware v. Orange Unified School District/Court of Appeal

Issue:

Does a school district governing board have the right to adopt a censure resolution to collectively express its opinion about the improper conduct of an individual board member?

Accessibility of Playground Surfaces

Spieler v. Mount Diablo USD/9th Circuit Court of Appeal

Issue:

Must districts install rubberized surfaces in playboxes in order to satisfy the accessibility requirements o the Americans with Disabilities Act?

Dismissal of Employee for Failure to Assist in Internal Investigation

Spielbauer v. County of Santa Clara, et al./California Supreme Court

Issue:

May a public employee be terminated for refusing to answer questions regarding the performance of public duties after having been forewarned that refusal to answer his employer's questions would constitute insubordination leading to termination and assured that his statements could not be used against him in criminal proceedings?

District Liability for Harassment Based on Sexual Orientation

Donavan/Ramelli v. Poway USD/California Court of Appeal

Issue:

What is the appropriate standard for district liability for student-on-student harassment on the basis of sexual orientation pursuant to Education Code §220?

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.*

CSBA

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