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The California School Board Association's
Education Legal Alliance

Alliance REPORT

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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 and county offices of education 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

Education adequacy campaign

Since it became abundantly clear that the Williams settlement would not have a meaningful impact on adequacy of school funding, the Alliance has been exploring different strategies for requiring the state to provide districts with "adequate" funding. The focus of CSBA's effort is (1) planning and building partnerships to determine what resources are necessary and (2) identifying strategies for the provision and effective allocation of those resources to schools.

Adult education audits settlement

Alhambra City HSD, CSBA/ELA, et al. v. Eastin et al. | Sacramento County Superior Court

For more than 10 years, there has been controversy between school districts and the Departments of Education and Finance over the standards and practices used for 1990-91 and 1991-92 "audits" of adult education concurrently enrolled ADA. In an apparent move to break the stalemate, the SPI in October, 2002 sent a letter to 35 affected school districts indicating an intent to reduce their adult education caps. The total ADA to be disallowed was 7,716 with a total value of $17,307,324. The circumstances surrounding these "audits," and the lack of statutory basis for the standards applied in making the proposed cuts, left the districts, led by the Alliance, no choice other than to file suit to halt the proposed ADA disallowances and to try and resolve the issue once and for all.

These outstanding audit findings served as a basis for both Governors Davis and Schwarzenegger to veto legislation attempting to provide much needed adult education funding reform. In the past, authorized monies not used by adult education programs reverted to the education reversion account. However, many districts needed additional funding to meet the demand of their community for expanded adult education programs and were not able to access funding in the reversion account because of the existing funding formula. These programs had to use general fund dollars to meet the excess demand.

This year Governor Schwarzenegger signed AB 23 resulting in the long sought after reform of adult education funding and ending the "audit" dispute. Expanding programs can now access funds not utilized by other adult education programs.

As to the "audited" districts, those facing substantial ADA disallowance due to the threatened implementation of the "audit" findings will only lose access to growth funding this school year, and for some, next year as well. Their access to the new money will also likewise be restricted.

This "audit" settlement and resolution of the needed funding reform are a result of litigation filed by the Alliance, and 23 of the 35 districts, to halt implementation of the so called "audit" findings. The lawsuit presented a strong case the "audits" were unsupportable in law but a court victory would not have necessarily brought about the needed funding reform beneficial for all adult education programs.

Parcel tax litigation

Katz v. Santa Clara County Registrar of Voters (Mountain View-Whisman SD) | *Santa Clara County Superior Court*

Background:

The Mountain View-Whisman School District was involved in litigation at the trial court level that could have had a far-reaching impact on school districts in California. In 2004, a parcel tax was approved by 69 percent of the resident voters. Subsequently, a non-resident investment property owner sued claiming that his equal protection rights were violated since, as a property owner, he should have been allowed to vote on any tax that would be levied on his property.

The district argued that state law clearly restricts the right to vote on parcel taxes to school district residents. The Plaintiff also filed lawsuits on the same issue against the Campbell Union High School District (parcel tax), a hospital district (bond measure), and a community college district (bond measure). All of the cases were consolidated by the court.

Recent activities:

The judge has dismissed all four suits. However, the dismissal was not based on the merits of the suits, but instead was based on a technicality dealing with service of legal papers. Katz has appealed the dismissal, but it is unlikely that the court will get to the underlying merits of the case.

Role of the Alliance:

The Alliance continues to monitor the situation and will continue reviewing the possibility of Alliance involvement if, and when, there is a hearing on the merits of the case.

UPDATE ON NEW ALLIANCE CASES

Classification of teachers with emergency permits

Bakersfield Elementary Teachers Association v. Bakersfield ESD and
CTA and Vallejo Education Association v. Gov. Bd. Vallejo USD | California Appellate Courts

Issue:

Should teachers and counselors with emergency permits, including pre-interns and interns, be classified as probationary or temporary employees for layoff purposes?

What these cases are about:

In the Bakersfield case, the district instituted layoff proceedings and properly notified probationary teachers of the layoff. However, notice was not provided to employees classified by the district as "temporary." "Temporary" employees included full-time counselors and teachers who possessed emergency permits, pre-intern certificates, or internship credentials. Ultimately, 133 temporary employees were released, although 73 were subsequently reemployed by the district. The teacher's association sued and the Kern County Superior Court ruled against the district. The court took the position that the teachers/counselors were wrongfully classified as temporary based exclusively upon their possession of certain teaching credentials, including emergency permits and pre-intern certificates. Since these teachers were neither permanent or substitute, and because none of the circumstances authorizing temporary classification applied, the court held that they should have been classified as probationary teachers.

The court ordered the district to reinstate and reclassify the temporary teachers so that they could receive proper seniority credit and recover lost compensation and benefits for the period preceding reemployment. Because the temporary employees were excluded from the seniority list and the layoff proceedings, the court vacated the entire layoff. The district estimates that the rehires could cost the district more than $3.5 million.

In the Vallejo USD case, the issues are essentially the same. However, the trial court ruled against the Plaintiffs and their claim that they should have been classified as probationary employees, which would have entitled them to the benefits of layoff rather than mere notice of release.

Why these cases are important:

These cases are of statewide significance since districts and county offices need clearly understood procedures for the conduct of layoffs. In these times of layoffs, a "gotcha" by emergency permit holders and those teaching with waivers is devastating. The trial court's decision means that in a future layoff some non-credentialed teachers could have greater seniority than some fully credentialed probationary teachers.

Role of the Alliance:

The Alliance will file amicus briefs in support of the districts in both cases.

Eligibility for special education services

R.B. by F.B. v. Napa Valley USD | 9th Circuit Court of Appeal

Issue:

Have the criteria for IDEA 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?

What this case is about:

As a younger child, R.B. had neurological health issues and subsequently displayed severe, emotional symptoms and was diagnosed with Attention Deficit Hyperactivity Disorder. As a preschooler, she was found eligible for special education services as a student with a specific learning disability and, as a kindergartener, she was placed in a regular classroom with support from a resource specialist.

When the district conducted its assessment of R.B., the individualized education program team found that she no longer needed special education services because she no longer had a learning disability; thus a Section 504 plan was developed. Although she had occasional behavioral problems in school, she consistently received high grades and made appropriate progress on the state standardized tests. She made the school's honor roll. Eventually, her behavior deteriorated and a behavioral support plan was developed by the district. R.B.'s 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 claims that they are entitled to reimbursement for the cost of the private assessment and private placement.

Both the special education hearing officer and the lower court judge ruled in the district's favor that the IDEA eligibility criteria had not been met. Furthermore, even if the criteria had been met, both the hearing officer and judge determined there was no impact on R.B's educational performance.

Why this case is important:

This case is important since there are no 9th Circuit Court decisions directly addressing the IDEA eligibility criteria for emotional disturbance or more specifically, the required showing of what "adversely affects a child's educational performance."

Role of the Alliance:

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

Eminent domain property valuation

Mt. San Jacinto Community College District v. Superior Court of Riverside, Azusa Pacific University RPI | California Supreme Court

Issue:

When utilizing a "quick take" eminent domain action, should the date of valuation of the property be the date the condemner deposits probable compensation or the date of trial on the issue of just compensation?

What this case is about:

Mt. San Jacinto Community College District commenced a "quick take" eminent domain action against Azusa Pacific seeking to condemn 30 acres of vacant land. In accordance with law, Mt. San Jacinto deposited $1.789 million as probable compensation for the property. The law allows a condemner to apply for a prejudgment order for possession upon deposit of probable compensation for the owner. The deposit must be supported by an appraisal and is designed to approximate the amount the owner will ultimately be awarded by a jury. Mt. San Jacinto applied for a prejudgment order and the order was granted.

The trial court ruled that Mt. San Jacinto had a right to take the property. Mt. San Jacinto argued that the date of valuation of the property should be the date the deposit was made. Azusa Pacific argued that the date of valuation should be the date of trial on the compensation issue since the property had substantially increased in value in the last two years (the time it took for the trial to begin). The approximate value of the land at the time of trial was $4.2 million.

A trial was then to be held on the valuation issues. Appeals ensued and ultimately the trial court issued an order setting the valuation date as the date of the valuation trial. On appeal, the appellate court overruled the trial court and ordered that the valuation be set on the date of deposit. The university appealed and the California Supreme Court accepted the case.

Why this case is important:

Many school districts use the "quick take" procedure in order to expedite completion of school facilities projects. If the date of valuation in this case is determined to be the date of trial, school districts, particularly in a rising real estate market, will be forced to delay projects until the valuation is determined. No district will want to go forward with an eminent domain driven project based on a deposit/possession order for fear that the trial date valuation may be so high so as to make the project not financially feasible. In addition, such a result would also make it difficult for districts to determine the cost of building a school when applying for state facility funds.

Role of the Alliance:

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

Board deliberation in closed session

Benitez v. Rio School District | California Court of Appeal

Issue:

Upon request by an employee to have "specific complaints or charges" heard in open session, does the law require that the governing board deliberate and vote on the charges in open session?

What this case is about:

In the middle of her contract, the governing board became dissatisfied with the superintendent's performance. The board directed that an investigation be conducted. As a result, proposed complaints and charges were presented to the board. First, the board met to determine if it would adopt the complaints and charges against the superintendent. At a subsequent meeting, the board met to decide whether, based on the complaints and charges, it would terminate the superintendent's contract. Before both meetings,

the superintendent was given Brown Act-required notices of the pending actions and of her opportunity for the complaints and charges to be heard in open session. The superintendent requested open sessions and they were held. After both open sessions, the board then met in closed session to deliberate and decide. After the first closed session, the board reported out in open session that it had adopted the charges and, after the second meeting, that it had terminated the superintendent's contract.

The trial court judge found that the board had violated the Brown Act when it decided to terminate her contract in closed session. Because the decision was based on complaints and charges, the decision and the discussion that preceded it should have taken place in open session. The judge, deeming the board's procedures defective, declared the board's decision "null and void" and ordered the district to pay the superintendent back pay, the value of health benefits, and other fringe benefits.

Why this case is important:

It is important that a governing board's right to deliberate in closed session under these circumstances be protected.

Role of the Alliance:

The Alliance has filed a limited and specific amicus brief solely on the Brown Act issue.

RULINGS/SETTLEMENTS IN ACTIVE ALLIANCE CASES

Charter school facilities under Proposition 39

Ridgecrest Charter School v. Sierra Sands Unified School District | California Court of Appeal

Issue:

When providing facilities to a charter school pursuant to Proposition 39, does the requirement that a district provide "contiguous" facilities require the district to offer facilities at a single school site?

Case Status:

The California Court of Appeal's ruling in this case has an enormous impact on school districts and how Proposition 39 charter school facilities requests are handled. The law requires that districts provide facilities to charter students that are "reasonably equivalent" to facilities provided to district students.

The appellate court interpreted the term "reasonably equivalent" to mean that, to the maximum extent practicable, the needs of the charter school must be given the same consideration as district-run schools balanced with the need for contiguous facilities. Thus, districts must begin with the assumption that all charter students will be assigned to a single school site and then adjust other factors to accommodate this goal. How those factors will be weighed and whether those factors would make a single school site feasible will be on a case-by-case determination. In this case, the court found that the district abused its discretion because it failed to demonstrate that it could not accommodate the charter at a single school site or that it had minimized the number of sites.

CSBA has prepared an advisory discussing this important case. A copy of the advisory can be found on CSBA's website at: http://www.csba.org/PA/prop_39_advisory.pdf.

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