

Alliance

R E P O R T

Important issues

Statewide Benefit Charter Schools... 1

Proposition 39 Charter School Facilities Regulations..... 2

Mandated Cost Lawsuit 3

Mandate Deferral Lawsuit 4

Mandated Cost Claim Audits by the State Controller's Office.... 4

Behavioral Intervention Plans ... 5

Other active cases

Use of District Mailboxes for Campaign Purposes 6

Attorneys' Fees in Settlement of a Special Education Lawsuit .. 6

Board Censure Resolution 6

Dismissal of Employee for Failure to Assist in Internal Investigation..... 6

Accessibility of Playground Surfaces..... 6

Right of Student to Attend a Protest During the School Day ... 6

District Liability for Harassment Based on Sexual Orientation 7

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 school district, COE, or ROC/P is involved in a matter 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/issue 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.*

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:

Statewide Benefit Charter Schools

Alameda County Superior Court

Issue:

Must the State Board of Education 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 school district or county before granting the charter statewide?

Alliance Activities:

The Alliance has filed litigation to overturn the SBE approval of the Aspire Public Schools statewide charter petition. The Alliance's petition also requests that the court direct, at the end of the 2007-08 school year, closure of the two schools opened by Aspire pursuant to SBE approval.

Recent Update:

The case remains in the preliminary stages in the trial court with a ruling on the merits anticipated this summer.

Background:

AB 1994 (Chapter 1058, 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 finds that the charter will provide instructional services of statewide benefit that cannot be provided by a charter operating in only one district or county.

In January 2007, the SBE approved the application of Aspire to operate a statewide benefit charter, initially authorizing schools in the Stockton Unified School District and Los Angeles Unified School District.

The Alliance demanded that the SBE rescind its action for failing to substantiate the necessary finding by the board that the petition detailed a statewide benefit that could not be duplicated at the local level. When the SBE declined to take action in response to the Alliance's letter, litigation was filed. The litigation does not challenge Aspire charter schools operating with local school district approval.

Why this issue is important:

The Alliance believes that the SBE is acting contrary to law by 1) approving statewide benefit charters without first determining that the charters could not be accommodated by a local district or county office of education, and 2) without requiring a petitioner to produce evidence of unique circumstances that would justify whether the charter is of statewide benefit. The concern is that charters will bypass local districts in an attempt to avoid local oversight and move straight to the SBE, where they are likely to receive a favorable reception.

Proposition 39 Charter School Facilities Regulations

State Board of Education

Issue:

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

Alliance Activities:

For over two years, the Alliance has opposed SBE proposed amendments to its Proposition 39 facilities regulations.

Recent Update:

The regulations were finally approved by the SBE at its January, 2008 meeting and by the Office of Administrative Law in late February. The regulations became effective March 28, but will not impact school districts until fall 2008 when charter schools initiate facilities requests for the 2009-10 school year. The Alliance has begun preparation of a lawsuit challenging the regulations based upon the theory that many of the proposals exceed the SBE's legal authority. The lawsuit will likely be filed in Spring 2008.

Background:

Since the passage of Proposition 39, there have been four court decisions relating to charter school facilities issues. After informal meetings with the Alliance, the California Department of Education staff proposed revisions to the existing SBE regulations to incorporate the court decisions and to reconsider regulations that would create a dispute resolution procedure. During the rulemaking process, the Alliance filed formal comments with the SBE.

Why this issue is important:

Many of these proposed revisions are detrimental to school districts. For example, the statutory requirement to furnish and equip facilities "for the charter school's average daily

classroom attendance by in-district students” was expanded to include providing front office equipment and additional, though undefined, support furnishings and equipment (“student services that directly support classroom instruction”). In addition, attendance boundaries of an approved conversion charter school cannot be changed or the school removed from its site without a waiver from the SBE. The new regulations include a voluntary mediation process for dispute resolution.

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.

Mandated Cost Lawsuit

CSBA/ELA, et al. v. State of California, Commission on State Mandates | California 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” or “reasonably within the scope of” a mandate expressly specified in a ballot measure approved by the voters?

Alliance Activities:

In 2007, the Alliance initiated a lawsuit against the state and the Commission on State Mandates and won in the trial court. The state and COSM have appealed that decision and the Alliance also filed a cross-appeal. Based on arguments raised by the COSM in the first lawsuit, the Alliance has filed another lawsuit against the COSM concerning the School Accountability Report Card mandates.

Recent Update:

Both sides are in the process of filing briefs with the appellate court. The appellate court will hopefully decide this case by the end of the year.

Background:

The basis of the lawsuit is the approval of AB 138 (Statutes 2005, Chapter 72) 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. AB 138 expanded an existing statute exempting the state from having to reimburse school districts for costs of mandates expressly specified in a voter-approved ballot measure to include those costs of mandates “necessary to implement” or “reasonably within scope of” the voter-approved mandate.

For many years, the COSM had determined that three state mandated programs were reimbursable mandates: the SARC, the Mandate Reimbursement Process, and certain Brown Act requirements. AB 138 “compelled” the COSM to change its prior determinations by requiring the COSM to either vacate or reconsider its decisions because the mandates were either “necessary to implement” or “reasonably within the scope of” an expressly specified voter-approved mandate. The previously-COSM approved SARC, MRP and Brown Act reimbursable mandates, although not expressly included in a voter-approved ballot measure, have “roots” in voter-approved ballot measures.

Why this case is important:

The Legislature does not have the authority “to write its own ticket” to avoid paying for the mandates it imposes. AB 138, determined unconstitutional by the trial court, was part of that effort to avoid payment.

Mandate Deferral Lawsuit

CSBA/ELA et al. v. State of California et al. | San Diego County Superior Court

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?

Alliance Activities:

The Alliance has filed a lawsuit challenging the state's authority to defer mandate payments and seeks to compel the state to fully reimburse districts and COEs for all new programs or higher levels of service.

Recent Update:

A trial has been scheduled in May and a decision by the court is expected soon thereafter.

Background:

The State Constitution requires that, whenever the state mandates a new program or higher level of service on any local government (including school districts), it must reimburse the local government for the costs incurred. 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.

The 2006-07 state budget appropriated \$900 million to fund the accumulated debt and added some funding for 2006-07 mandates. However, this appropriation failed to pay off the past debt and was inadequate to cover the 2006-07 obligations. Although the estimated cost of the K-12 mandates for 2007-08 is estimated at \$160 million, the 2007-08 state budget appropriates only \$38,000, or \$1,000 per mandate. The carry-over "credit card debt" from prior years is approximately \$415 million.

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.

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?

Alliance Activities:

The Alliance is providing financial assistance to districts who have filed suit in the trial court against the SCO.

Recent Update:

A trial has been scheduled for April 25 and the court's decision is expected this summer.

Background:

Since 2002, the SCO has audited reimbursable 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. The lawsuit filed against the SCO, led by Clovis USD, is focused on SCO procedures in the following mandate programs: collective bargaining, school district of choice, intra-district attendance, notification of truancy as well as graduation requirements.

Why this case is important:

The new documentation requirements are not consistent with applicable government accounting standards and are part of the state's continuing strategy to reduce the state's liability for mandated costs.

Behavioral Intervention Plans

Commission on State Mandates | Sacramento Superior Court

Issue:

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

Alliance Activities:

The Alliance has retained legal counsel to represent test claimants before the COSM and to also represent the claiming districts in current negotiations with the Department of Finance and in pending litigation filed by the DOF.

Recent Update:

At the request of the Alliance, Special Education Local Plan Areas are completing a cost study in order to determine how much this mandate is costing districts and county offices. Meetings to negotiate a settlement commenced in March and results of the study will be relied upon in the negotiations. Resolution of this long-standing mandate claim is expected in 2008, either through as a result of the negotiations or litigation.

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. In 1994, a test claim was filed with the COSM claiming the behavioral intervention plan requirements imposed a reimbursable state-mandated program upon school districts and county offices. In 2000, the COSM adopted a decision agreeing that the regulations imposed a reimbursable state mandate, but the COSM decision has not been implemented pending conclusion of negotiations to settle the exact amount owed by the state. However, negotiations stalled and, in 2003 the DOF filed litigation challenging the COSM's decision. Negotiations have now since resumed.

Why this issue is important:

The state requirements for behavioral intervention plans are detailed and costly, and it is important that the costs of this mandate be reimbursed. Districts and county offices are being required to implement an increasing number of behavioral intervention plans as more students are identified as needing special education and related services.

OTHER ACTIVE CASES

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

Use of District Mailboxes for Campaign Purposes

San Leandro Teachers Association, CTA/NEA; California Teachers Association v. San Leandro Unified School District | *California Supreme Court*

Issue:

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

Attorneys' Fees in Settlement of a Special Education Lawsuit

M.D. and S.D. v. OAH and Saddleback Valley USD | *U.S. 9th Circuit Court of Appeal*

Issue:

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

Board Censure Resolution

Californians Aware v. Orange Unified School District | *California 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?

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?

Accessibility of Playground Surfaces

Spieler v. Mount Diablo USD | *U.S. 9th Circuit Court of Appeal*

Issue:

Must districts install rubberized surfaces in play boxes in order to satisfy the accessibility requirements of the Americans with Disabilities Act?

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?

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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California School Boards Association
3100 Beacon Blvd.
West Sacramento, CA 95691
916-371-4691 Fax 916-371-3407
www.csba.org
E-mail: legal@csba.org

Education Legal Alliance Staff

John Bukey

General Counsel

Richard Hamilton

Associate General Counsel & Director, ELA

Judy Cias

*Director, Policy Update Service &
Assistant General Counsel*

Yvette Seibert

ELA Assistant



We fight better when we stand together.

Keep supporting the Alliance that supports you.

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