

Alliance

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

We fight better when we stand together

The Education Legal Alliance of the California School Boards Association initiates and supports litigation on behalf of public schools. This consortium of school districts, county offices of education 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 that the alliance is tracking, or an issue in which the Alliance is initiating legal action.

AB 1381/Mayoral takeover of LAUSD

Mendoza et al. v. State of California et al. | California Court of Appeal

Issue:

Are the provisions of AB 1381 (Los Angeles mayoral “takeover” bill), removing the authority of the LAUSD governing board and establishing a new convoluted governance structure for Los Angeles USD, constitutional?

What this case is about:

CSBA/Alliance is a Petitioner in this case along with LAUSD, a coalition of LAUSD parents, parent groups, Diane Watson (member of Congress and former LAUSD board member), the League of Women Voters of Los Angeles, the Association of California School Administrators and the Associated Administrators of Los Angeles.

AB 1381 restructures LAUSD governance, narrowing the governing board's authority and providing Los Angeles Mayor Antonio Villaraigosa with effective control over LAUSD through a Council of Mayors, which is comprised of the mayors of the cities served by LAUSD and

supervisors from the unincorporated areas, with representative voting rights based on the number of LAUSD residents in each city/area.

AB 1381 grants an expanded role to the LAUSD superintendent over operational and employment decision-making, contracting authority, and budget development authority with the budget presented to the Council of Mayors for review and comment before final approval by the governing board. The LAUSD superintendent is employed by the governing board but all employment decisions with respect to the superintendent must be ratified by the Council of Mayors. AB 1381 establishes the “The Los Angeles Mayor’s Community Partnership for School Excellence” comprised of the L.A. mayor, a representative of LAUSD, parent and community leaders and organizations, and school personnel and employee organizations. This partnership is to develop and implement an educational demonstration project for three clusters of the lowest performing schools in different geographic areas of the city of L.A. (each cluster to include a high school and its feeder middle and elementary schools). This demonstration project is estimated to involve 80,000 students.

Why this case is important:

CSBA believes that locally elected governing boards represent the most fundamental element of a democratic society and are the basic embodiment of representative government. Governing board members are elected in nonpartisan elections by their communities to provide leadership and represent the community’s interest in the governance of schools. Therefore, CSBA supports the maintenance of governing board decision-making authority to meet the educational priorities and needs of the community.

CSBA believes that AB 1381 unlawfully removes the rights of parents and voters to elect their representatives to the LAUSD governing board and unlawfully transfers authority for the educational program to persons outside the school system who are not accountable to the school system. CSBA believes that such a departure from the locally-selected governance structure contemplated by the state Constitution and laws will hinder local participation in education governance and interfere with the ability of school districts to provide educational services to students through out the state

Role of the Alliance/Case status:

In December, the trial court ruled that AB 1381 was unconstitutional on all of the grounds asserted by the petitioners. Respondents (Mayor Villaraigosa, the governor, the state controller, the state Board of Education and the Los Angeles county superintendent) were prohibited from implementing AB 1381.

Respondents, except for the LA county superintendent and intervenor LA Parents Union, immediately appealed to the District Court of Appeal and requested an expedited briefing schedule in order to obtain an appellate court ruling as soon as possible. Appealing Respondents have filed a request with the California Supreme Court to transfer the appeal to that court for immediate review. Unless the Supreme Court grants review, the appellate court will hear the case in April.

Mandated cost lawsuit

*CSBA/ELA, et al. v. State of California, Commission on State Mandates
Sacramento County Superior Court*

Issue:

Is a statute constitutional which 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 approved by the voters?

What this case is about:

The basis of the lawsuit is the legislature's approval of AB 138 (Statutes 2005, Chapter 138), a statute enacted as part of the state's strategy to terminate its constitutional obligation to reimburse local governments for costs associated with providing mandated services. The state's constitutional obligation arises from Proposition 4, approved by the voters in 1979, which required reimbursement to local governments for state mandates, thereby preventing the state from forcing programs on local governments without allocating money to pay for those programs.

The Commission on State Mandates is the entity charged with determining which legislation constitutes a state mandate and how much will be reimbursed to local agencies. For many years, the Commission had determined that three state mandated programs were reimbursable mandates - the School Accountability Report Card, the mandate reimbursement process itself and certain Brown Act requirements. But AB 138 changed that by requiring the Commission to either vacate or reconsider its prior decisions. Thus, in accordance with the legislature's directive, the Commission has reversed and set aside its prior determinations in the three claim areas that are the basis of this litigation.

Why this case is important:

CSBA/Alliance, joined by Sweetwater Union HSD, the City of Newport Beach and Fresno and Los Angeles counties, has filed a lawsuit challenging AB 138 and the actions of the Commission. The lawsuit reflects the Alliance's assertion that these provisions are unconstitutional and invalid as the legislation adds new, additional requirements beyond those in the Constitution that local governments must satisfy in order to claim a reimbursable mandate and denies local government access to pursue legitimate claims.

Role of the Alliance/Case status:

CSBA/Alliance has taken the lead in this litigation. A court hearing was conducted in early January and the Alliance is awaiting its decision. Updates will be posted on CSBA's Web site at: <http://www.csba.org>.

Mandated cost claim audits by the state controller's office**Background:**

Since 2002, the state controller's office has audited reimbursable state mandate claims filed by local education agencies (LEAs). A number of problems have arisen with the auditing procedures relied upon by the state controller's office, 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 newly-required supporting data for staff time. A two-part "group" challenge of the new procedures is underway: 1.) the filing of incorrect reduction claims with the Commission on State Mandates and 2.) the filing of a lawsuit against the SCO. The majority of the problems with the SCO procedures have been in the following mandate programs: collective bargaining, school district of choice, intra-district attendance, notification of truancy, and graduation requirements. In the 2005-06 budget, 10 new auditor positions were authorized for the SCO. Thus, with more staff available to conduct the audits, it is likely that even more LEAs will have these same audit problems.

Recent activities:

The Alliance is working with the parties to negotiate a settlement of the lawsuit which will include a long term solution, e.g., published audit guidelines binding on the SCO's auditors.

Revision of Proposition 39 charter school facilities regulations

Background:

In 2002, the state Board of Education adopted regulations implementing the facilities requirements of Proposition 39, including regulations requiring binding arbitration to resolve facilities disputes between charter schools and districts. This proposal was adopted by the SBE, but ultimately rejected as unauthorized. 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 starting about a year ago by charter school interests and California Department of Education staff to develop proposed revisions to the existing regulations to incorporate the court decisions and to revisit the dispute resolution procedure. Informal discussions took place and CSBA/Alliance was a participant. Many of the CSBA and Alliance concerns were addressed but objections remain, particularly with the dispute resolution process.

Recent Activities:

Despite the remaining concerns raised by CSBA and many other groups, the SBE approved the revised regulations at its January meeting, thus beginning the formal rulemaking process. If our objections are not appropriately addressed, the Alliance is prepared to file a lawsuit to challenge implementation of the new regulations.

UPDATE ON NEW ALLIANCE CASES

The following section discusses cases in which the CSBA executive committee or the Alliance steering committee has approved involvement of the Alliance.

Standard for workers' compensation claims

Elk Grove Unified School District v. Workers' Compensation Appeals Board, Janet Stroth, Real Party in Interest | California Court of Appeal

Issue:

Can work-related injuries to a teacher resulting from student misconduct be determined to be the result of employer "serious and willful misconduct" when the employing school district has undertaken good faith and substantial efforts to abate the potential danger of the student to the teacher?

What this case is about:

Janet Stroth was employed as a 5th grade teacher in Elk Grove Unified School District. As a result of being "charged into" by an angry 5th grade student, she sustained injury and the district accepted her worker's compensation claim and regular workers' compensation benefits were paid.

The student had been attending classes in the district for three years. He had been progressively disruptive and had been disciplined numerous times by the school for hitting and pushing other students. Until the injury to Stroth, he had not injured a district staff member. On more than one occasion, the district had tried to get the student into the district's behavior management program, but his parents did not consent to that placement. While the student was in Stroth's 5th grade class, she made several requests of the school's administrators that he be removed. At the time of the injury, the district was trying to work with the student's parents for placement into a special education program. During this time, the student remained in Stroth's classroom because the district did not believe that there was a sufficient basis for seeking a unilateral change in

“placement” under the special education laws. In addition, until the injuries to Stroth, the district administrators did not believe they had a basis for recommending expulsion. After the injuries to Stroth, the district could not expel the student because his behavior was directly related to his disability under special education laws.

Stroth filed an “Application for Benefits for Serious and Willful Misconduct of Employer” under workers’ compensation laws. In order for a determination of serious and willful misconduct, the worker must show that the employer was more than negligent, but was instead wanton and reckless. A workers’ compensation administrative law judge made a “serious and willful misconduct” award of an additional \$45,785 (1/2 of the total benefits previously paid) based on the administrators’ knowledge of the student’s behavior and their failure to permanently remove the student from the teacher’s classroom. The district appealed the decision to the Workers’ Compensation Appeals Board. The WCAB denied reconsideration of the issue thus affirming the administrative law judge’s ruling. The district appealed the WCAB decision to the appellate court.

Why this case is important:

The district believes that a good faith, substantial effort was made to abate the student’s behavioral and discipline problems in accordance with Education Code requirements. The district accepts that, at the very most, under the facts presented, the court could find that the district was negligent, but disagrees that its actions were in violation of serious and willful misconduct statutes. The essence of Stroth’s case is that, in response to her complaints, the district did not remove the disruptive student from her class.

Role of the Alliance:

The Alliance has filed an amicus brief in support of the district and a ruling is expected soon.

RULINGS/SETTLEMENTS IN ACTIVE ALLIANCE CASES

Classification of teachers with emergency permits

Bakersfield Elementary Teachers Association v. Bakersfield ESD

CTA and Vallejo Education Association v. Gov. Bd. Vallejo USD

California Court of Appeal

Issue:

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

Case Status:

This case concerns the lay-off of “probationary” employees. In spring 2003, the district instituted layoff proceedings. The district properly notified probationary teachers of the layoff but 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. The temporary employees had signed a contract indicating their status as temporary and they did not object to the classification until after the layoff proceedings for the probationary employees had begun.

The superior court took the position that the temporary 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, they should have been classified as probationary teachers. According to the court, teachers and counselors may not be classified as substitute or temporary unless they meet those narrow statutory conditions, which must be strictly construed. Bakersfield City appealed the superior court's decision.

The Alliance filed an amicus brief in support of the district to focus the court on the fact that these temporary teachers had not attained teaching credentials, that they performed services under emergency permits to render services for limited periods, and that the Education Code prohibits such service from being recognized in attaining permanency or "tenure." Therefore, such teachers are properly classified as temporary employees and are not entitled to the layoff rights granted to permanent and probationary teachers.

The Appellate Court upheld the trial court's determination that classification and certification operate independently of one another. That is, a person who has been determined to be qualified to teach is not a temporary employee simply because he or she is not yet fully credentialed. Although, the court acknowledged the district and Alliance's argument that such a finding could lead to the possibility that a teacher with an emergency permit could then have more seniority than one with a regular credential and, as a result, a fully credentialed teacher would be laid off first, the court determined that a reading of the statute necessitated that finding in order to comply with the legislature's intent.

The court held that district's policy classifying teachers and counselors as temporary employees, when it is based on the fact they possess less than a preliminary or professional (clear) credential, is invalid. The court ordered the district to re-determine the seniority of the employees subject to the lay-off proceeding. The court ruled in favor of the district to the extent that claims for back-pay and benefits were limited to just the one school year.

CTA/SPI Proposition 98 lawsuit

CTA/SPI v. Schwarzenegger

Issue:

Did Governor Schwarzenegger unlawfully deny schools funding in 2004-05 when schools did not receive their Proposition 98 guaranteed funding correct?

Case Status:

CTA and Superintendent of Public Instruction Jack O'Connell sued the Schwarzenegger administration to enforce Proposition 98 and the budget agreement that the governor reached with the Education Coalition in December 2003. CSBA intervened in the case and became a party in the lawsuit.

The 2003 budget agreement suspended Proposition 98 and stated that school districts would receive \$2 billion less than they otherwise would have been entitled to in 2004-05. The agreement specified that the \$2 billion would be restored as state revenues increased. Because of the increase in state revenues during 2004-05, schools became entitled to an additional \$1.8 billion under the Proposition 98 guarantee. The Proposition 98 guarantee was not recalculated in 2004-05. In addition, the 2005-06 Proposition 98 guarantee was calculated using the unlawfully-low funding provided to the schools in 2004-05. As a result, the 2005-06 guarantee was improperly lowered, an additional funding shortfall of \$1.3 billion was created, and the funds were budgeted for non-education purposes. These two failures to acknowledge an increase in the Proposition 98 guarantee created an estimated total funding shortfall of \$3.1 billion which is over and above the \$2 billion reduction that was agreed upon.

Triggered by the lawsuit, the governor agreed that school districts and county offices of education are owed \$2.9 billion with payment over 7 years, commencing in 2007-08. This amount is in addition to the governor's agreement this year (2006-07) to restore the \$2 billion maintenance factor created by the agreed-upon suspension of Proposition 98 for 2004-05.

The settlement terms were included in legislation (SB 1133, Stats. 2006). The litigation, which had been stayed pending approval of the legislation, has been dismissed.

District liability for field trips

Windsor Waterworks v. Santa Rosa City Schools

Issue:

Does the absolute immunity provision for field trips/excursions in the Education Code protect the district from liability from a drowning incident at an end-of-year party at a water park?

Case Status:

In July, the Court of Appeal issued a ruling in this case. Unfortunately, that court did not consider the issue stated above and, instead, ruled on procedural grounds that the case should be sent back to the trial court. As a result, the water park was allowed to amend its complaint and a new trial will be held. The Alliance will continue to monitor the case and, if at some point the immunity issue comes up again at the appellate court, will re-file its amicus brief in support of the district.

OTHER ACTIVE CASES

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

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?

Use of district mailboxes for campaign purposes

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

Issue:

Does Education Code §7054 require that a district prohibit the local association and others from using school mailboxes to distribute political material?

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 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?



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?

Evidence of molestation in teacher dismissals

Truitt v. Superior Court of California, County of Merced, Respondent, Atwater ESD, Real Parties in Interest | California Supreme Court

Issue:

Can charges and evidence of teacher molestation against public school students that are more than four years old be allowed in a school district dismissal proceeding?

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Keep supporting the Alliance that supports you.

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