Spring 2006

*The California School Boards Association's*
Education Legal Alliance

# Alliance REPORT

## Important issues



## Update on new Alliance cases



## Rulings/settlements in active Alliance cases



## Other active cases



*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/CASES

## CTA/SPI v. Schwarzenegger

*Sacramento County Superintendent*

In August, 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.

According to the Plaintiff's complaint, the agreement was codified in law which 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 and the 2005-06 guarantee was calculated using the unlawfully-low funding.

In February, the court granted the Motion to Intervene filed by CSBA and the Alliance and ACSA. Thus CSBA, along with ACSA, is an intervening party in the suit and will be included in any settlement discussions that may take place. CTA and SPI O'Connell recently filed a motion to the have the court enforce the Governor's agreement with schools for funding for 2004-05 and are seeking a court order requiring the governor to recalculate Proposition 98's guarantee of funding for schools for 2004-05. As intervenors CSBA and the Alliance, as well as ACSA, support CTA and the SPI by joining in the motion. After the court rules, a similar motion will be filed as to 2005-06.

## Mandated Cost Lawsuit

For some time, the Alliance has been concerned that the Legislature and the Commission on State Mandates (COSM) have employed a strategy to effectively eviscerate the ability of school districts/COES to identify state mandated programs and be reimbursed for providing the mandated services. The Department of Finance has been influential in this strategy. In addition, the state's efforts have been emboldened by court decisions which have examined mandate claims on an individual basis and have resulted in rulings that have been adverse to the interests of districts and county offices.

The COSM's recent action, authorized by legislation, to reverse its prior decisions regarding the School Accountability Report Card only heightens the Alliance's concerns. Mandates added through an initiative approved by the voters are not reimbursable, thus items on the School Accountability Report Card that were part of the Proposition 98 initiative cannot be claimed. However, the COSM had previously held that report card items later added by the Legislature were reimbursable. The COSM is now reversing course and finding that those additional items cannot be claimed through the mandate process. The SARC issue is only part of the concern of Alliance staff.

**Recent Activities:**

The Alliance has retained legal counsel to advise on a possible legal challenge against the COSM.

## 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.

# UPDATE ON NEW ALLIANCE CASES

## Union Use of District Mailboxes

*San Leandro Teachers Association, CTA/NEA; California Teachers Association v. San Leandro Unified School District | Alameda County Superintendent*

**Issue:**

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

**What this case is about:**

The San Leandro Teachers Association routinely placed copies of its newsletter in teachers' school mailboxes containing information about the association's activities. Two newsletters contained information about competitive salaries and health benefit increases. These newsletters also included information about the association's campaign activities to elect two candidates it had endorsed for the school board election, including urging members to assist in the campaign. Production of the newsletters was done at association expense and carried markings indicating that the material was a work of the association and not sponsored by the district.

The district informed the association president that the district would not allow use of the mailboxes for distributions that contained political endorsements, including the

association's position on ballot initiatives. The association filed an unfair practice charge with the Public Employment Relations Board alleging that the district interfered with the association's right to communicate with its members. PERB refused to issue a complaint and dismissed the unfair practice charge concluding that the school mailboxes were district equipment and the district was therefore permitted under the Education Code to ban materials from mailboxes that contained political campaign materials.

The association filed this suit challenging the district's action. The association's suit alleges that the district's interpretation of the Education Code to prevent the association from using school mailboxes containing political information was unconstitutional and that school mailboxes do not constitute "funds, services, supplies, or equipment" under the Education Code. The association also alleges that information of a political nature has been placed in the district mailboxes by other organizations (e.g., copies of the local newspaper which carry political advertisements and endorsements).

A decision is pending in the trial court and it is very likely that an appeal will immediately follow.

**Why this case is important:**

This case is of statewide significance because, if the Education Code is found unconstitutional as applied to school mailboxes, an association will be allowed one-sided access for political purposes which could result in other parties being allowed to use the mailboxes for campaigning. In any event, it is unlikely the district will be able to respond to this political campaigning and use the mailboxes to advocate the district's position on an election issue.

**Role of the Alliance:**

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

## 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?

**What this case is about:**

Plaintiffs, two openly gay students at Poway High School, claimed that they were harassed because of their sexual orientation and that the response by district staff was inadequate. As a result, the Plaintiffs allege that they were forced to enroll in a home-schooling program for their senior year. The Plaintiffs complained about several incidents of harassment, including not being selected to a sports team because of sexual orientation, name-calling, vandalism, and physical fighting. The district claims that the responses by staff were appropriate. Staff investigated the athletic team complaint and determined that the non-selection was based on ability. Students were suspended when fighting occurred. In response to the name-calling, when the principal asked the students to point out a location where the name-calling happened or attempt to identify an abusing student, the Plaintiffs could never provide enough information to allow the district to investigate.

The students sued the superintendent, principal, and assistant principal individually under a federal civil rights statute alleging deprivation of constitutional rights, and sued the district under Education Code §220, which prohibits discrimination in school programs or activities. In determining district liability under Education Code §220, the court applied a negligence standard which asks the questions whether the district knew or should have known of the harassment and whether the district failed to take immediate and corrective action with respect to the harassment. The district argued that the court

should apply the higher standard of "deliberate indifference" which is used in Title IX sexual harassment cases. A "deliberate indifference" standard asks the question whether administrators should have known that the law was clearly established and that the administrators displayed deliberate indifference to the harassing behavior.

A judgment was entered against the district and the administrators.

**Why this case is important:**

This case is of statewide significance because, if a district is held to a negligence standard in student-on-student harassment, then school officials may be held to a standard that is not achievable. In this case, the administrators responded appropriately and in a manner that is typical for most school districts.

**Role of the Alliance:**

The Alliance will file an amicus brief in support of the district on the limited issue of the standard of liability under Education Code §220.

## District Liability for Field Trips

*Windsor Waterworks v. Santa Rosa City Schools | California Court of Appeal*

**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?

**What this case is about:**

A 12-year old student in the Santa Rosa district drowned while on a school-sponsored end-of-the-year class party at Windsor Waterworks, a nearby water park. Education Code §35330 provides that all persons making a field trip or excursion in conjunction with a school-related activity are "deemed to have waived all claims" against a district for injuries occurring during the trip or excursion. Courts have defined "excursion" as a recreational journey. This section of the law is often referred to as the absolute immunity or "deemed waiver" provision.

The water park argues that the district should not be allowed to claim the benefit of immunity because of the lack of informed parental consent (allegedly an aunt signed the permission slip for the trip) and because of the district's fraud and negligence. The water park's claim of fraud is based on the their allegation that the school flier sent home to parents describing the trip stated that the park would be closed to the public when in fact other schools also had parties on that same day and the claim that the flier did not specifically mention that it was a swimming trip.

The district argues that Education Code §35330 clearly applies to field trips or excursions such as this one at the water park and that the district is entitled to absolute immunity from liability. In addition, even if the water park's claims are true and there was a lack of parental consent or district negligence, the code section does not state that such factors limit the district from claiming immunity.

**Why this case is important:**

This case is of statewide significance because it is important to protect the statutory defenses and immunity available to every school district in the state. If the district is found to be liable, it is likely that districts will be reluctant to allow field trips because of liability concerns.

**Role of the Alliance:**

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

# RULINGS/SETTLEMENTS IN ACTIVE ALLIANCE CASES

## Use of Role-Playing Activities when Teaching about Religion

*Eklund et al. v Byron Union School District et al. | 9th Circuit Court of Appeal*

**Issue:**

Did the district's use of role-playing activities to teach seventh grade world history students about Islam violate the Establishment Clause?

**Case Status:**

This case concerned the dividing line between teaching about religion and teaching religion. A teacher used role-playing activities during a 7th grade world history class, which contained a unit on Islamic history, culture and religion. The role-playing activities included teachings about the five pillars of Islam and such activities as: encouraging students to choose a Muslim name, reading portions of a Muslim prayer in class, making group banners containing words from the Qu'ran, and requiring students to give up something (e.g., recess) for the day or participate in community service. During these activities, the teacher emphasized that the activities were role-playing and that the students would not actually become Muslims through their participation.

The parents sued claiming that the district's class was unconstitutional since the nature of the role-playing had the effect of endorsing the Islamic religion because an objective 7th grader would perceive a message of endorsement of Islam through the use of the simulation materials.

The Alliance filed an amicus brief in support of the district in the hope that the court would develop clear standards for teaching about religion which would allow for creative teaching in this area while not crossing over into religious practice. However, when reaching a decision, the 9th Circuit did not even issue an opinion, but instead issued a memorandum which merely stated that the district did not violate the law. The court obviously felt that the law was well-settled that the district's class did not violate the Constitution.

## Non-Reelection of "Shared" Employee

*Roberts v. Tichinin (Ukiah Unified School District and Mendocino County Office of Education) California Court of Appeal*

**Issue:**

Is a teacher under contract with a COE, but loaned to the district part-time, entitled to tenure and notice of layoff from the district?

**Summary of the Case:**

An ROP teacher with permanent status employed by the county office was loaned to the school district under a series of one-year agreements. The district paid the county office a portion of the teacher's salary in proportion to the number of district classes he taught. The district decided it would not renew the one-year agreement with the county office for the teacher's services. As a result, the county, as his employer, sent the teacher a notice of layoff. The district did not provide any lay-off notification.

The teacher sued both the district and the county alleging that he had been laid off improperly and should be afforded tenure rights. While acknowledging that he never had an employment agreement with the district, the teacher argued that he should be "deemed"

a district employee based on his conduct at the district such as taking attendance, providing grades, and being evaluated by district administrators. The trial court ruled in favor of the teacher finding that he was a permanent employee of both the district and the county and thus he should have been provided with notice of layoff from the district. The court noted that even though he was under contract with the county, he was "controlled" by the district.

In a victory for the district and the Alliance, the appellate court concluded that the teacher was an employee of the county and not of the district since he did not have a contract with the district. Because this situation is common in rural areas where enrollment is not sufficient to sustain full-time employment of teachers with single subject credentials, this was an important decision.

# OTHER ACTIVE CASES

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

## Classification of Teachers with Emergency Permits

*Bakersfield Elementary Teachers Association v. Bakersfield ESD*
*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?

## 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?

## 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?

# Education Legal Alliance

## 2006 Steering committee

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# Education Legal Alliance

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