Fall/Winter 2010

The California School Boards 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 (COEs) 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 and COEs, 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 NEWS

School Finance Litigation

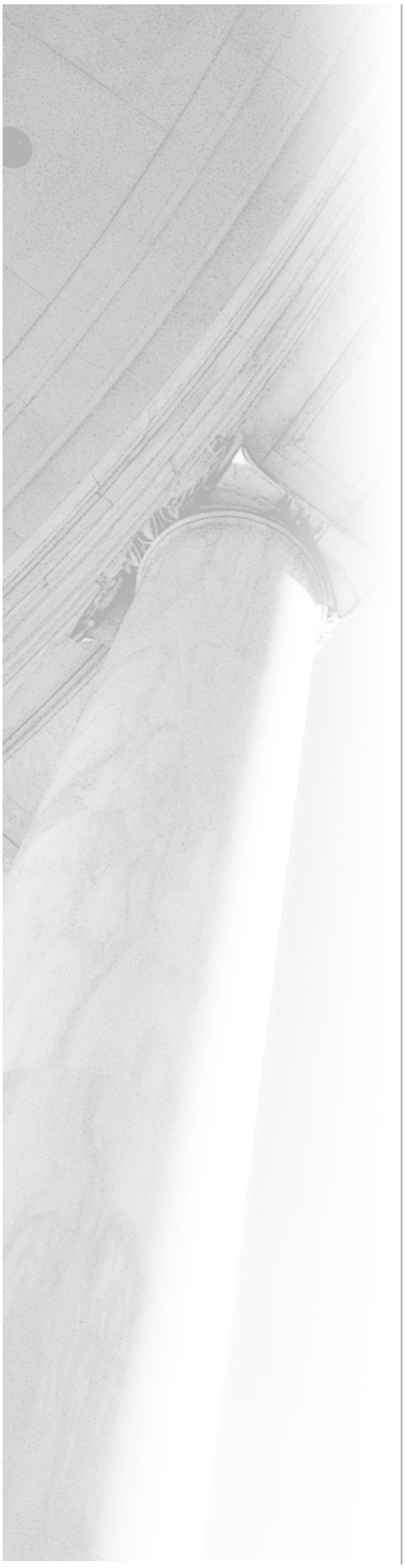
Robles-Wong v. State of California/Alameda County Superior Court

Background:

On May 20, 2010, the California School Boards Association filed an historic lawsuit against the State of California requesting that the current education finance system be declared unconstitutional and that the state be required to establish a school finance system that provides all students an equal opportunity to meet the academic goals set by the state.

The case, *Robles-Wong, et al. v. State of California*, was filed in the Superior Court of California in Alameda County. Specifically, the suit asks the court to compel the state to align its school finance system—its funding policies and mechanisms—with the educational program that the state has put in place. To do this, plaintiffs allege, the state must scrap its existing finance system; do the work to determine how much it actually costs to fund public education to meet the state's own program requirements and the needs of California's school children; and develop and implement a new finance system consistent with Constitutional requirements.

The lawsuit was filed by a broad coalition, including more than 60 individual students and their families, nine school districts from throughout the state, CSBA, the California State PTA, and the Association of California School Administrators.



Recent update:

On August 10, the state responded to the complaint by filing a "demurrer." A "demurrer" is a legal maneuver in which the defendant challenges the legal sufficiency of a complaint by claiming that even if all the facts alleged in the complaint are true, it does not state a valid cause of action.

Generally, the state's demurrer argues that the state has fulfilled its obligations by complying with Proposition 98 and that the separation of powers doctrine places the power to determine the sufficiency of the school finance system solely with the Legislature and therefore the court has no jurisdiction to hear the complaint.

Over the summer, CTA filed a motion to intervene in the case which was granted without opposition. CTA is working with CSBA and the other defendants to help present a consistent and unified message to the court. In addition, Public Advocates, Inc. filed a related lawsuit (*Campaign for Quality Education [CQE] v. State*) on July 12 in the same court. The state has filed a motion for judgment on the pleadings in that case raising many of the same arguments as in its demurrer in Robles-Wong.

A hearing date on the demurrer is set for December 10 in the Alameda County Superior Court. CSBA and the Alliance expect to prevail at that hearing. A hearing on the state's motion for judgment on the pleadings in the CQE case will also be held on December 10 – meaning both hearings will be held simultaneously. CSBA argues that the cases are different and they have not yet been consolidated by the court for other purposes.

Pre-trial discovery will not commence until after the court's ruling.

For more information about the school finance lawsuit, visit www.fixschoolfinance.org.

SUPPORT THE EDUCATION LEGAL ALLIANCE

When the Alliance enters a legal case, everyone wins. The Education Legal Alliance needs your continued support. Renew your membership or join the Alliance so we can continue the fight and take on issues that impact all students and schools. We are counting on YOU to make a difference.

Please support the work of the Alliance and renew or join today. Visit **www.csba.org/JoinELA.aspx** to learn more.

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 a trial court the Alliance is tracking, or an issue on which the Alliance is initiating legal action:

Mandate Deferral Lawsuit

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

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?

Background:

The state Constitution requires that whenever the state mandates a new program or higher level of service on any local government, it must reimburse the local government for the costs incurred unless funding for the mandates is completely deleted or the mandate is suspended. 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 has been used by the Legislature and governor in an attempt to satisfy the state's Proposition 98 guarantee and to deny districts the ability to avoid performing the mandated program or service.

Over the last several years, the state budgets have failed to appropriate enough money to cover current mandates or pay off the amount owed by the state for prior claims. Annual amounts continue to increase and the carry-over "credit card debt" from prior years ($766 million) plus unfunded mandates is nearly $2.5 billion.

Alliance activities:

In 2007, the Alliance filed a lawsuit challenging the state's authority to defer mandate payments and to compel the state to fully reimburse districts and COEs for all new programs or higher levels of service. The Superior Court ruled that the California Constitution requires the state to budget full reimbursement of local governments (including school districts) for the cost of state-imposed mandates. The judge's ruling prohibits this deferral practice in the future, although the decision has been stayed (held in abeyance) pending the outcome of the state's appeal.

Why this case is important:

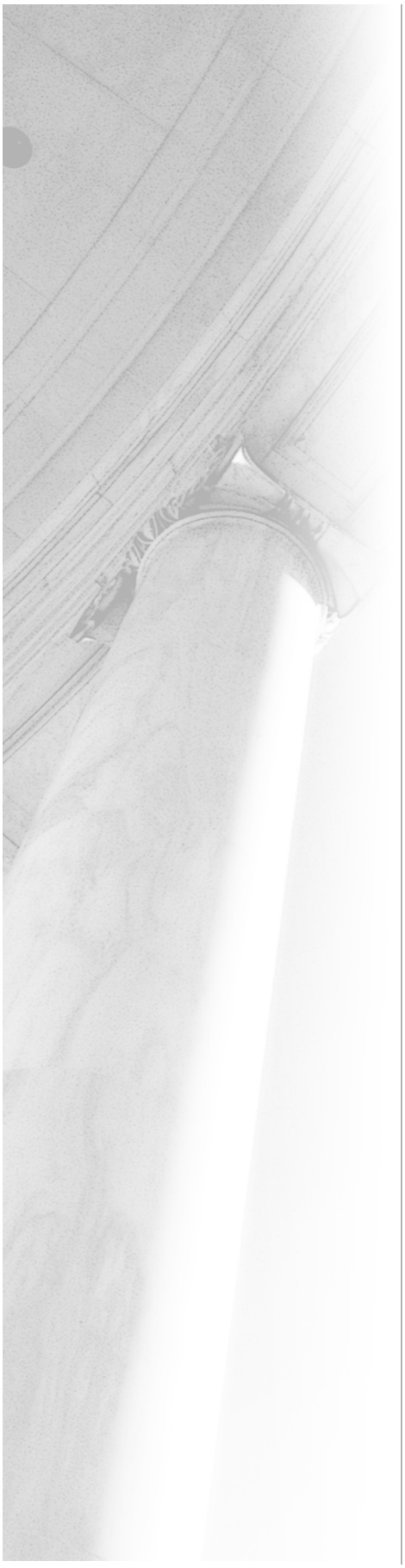
School districts and COEs are being forced to bear the costs of new programs and higher levels of service mandated by the state until some future time when the state chooses to appropriate funding. Forcing the state to follow the statutory requirement to either fully budget the mandates or suspend the mandates gives districts the ability to avoid having to perform the mandated programs or services.

Behavioral Intervention Plans

COSM/Sacramento Superior Court/Legislature

Issue:

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



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. Eventually, the Commission on State Mandates adopted a decision agreeing that the regulations imposed a reimbursable state mandate, but the COSM decision has not been implemented pending conclusion of what became stalled negotiations to settle the exact amount owed by the state. In 2003, the Department of Finance filed litigation challenging the COSM's decision. It has also been held in abeyance. Negotiations resumed in late 2007.

Alliance activities:

Although the Alliance negotiated a settlement in December 2008, which would have resulted in payments to districts, the Legislature failed to appropriate funding during the 2009-10 state budget. More troubling, the final 2010-11 state budget contained language specifying that the state's requirements are consistent with federal law which, in the eyes of the Legislature, eliminates the requirement for reimbursement. The Alliance is currently analyzing this new language and will likely file additional litigation.

Why this issue is important:

State requirements for behavioral intervention plans are detailed and costly. LEAs are being required to implement an increasing number of BIPs and it is important that this mandate is reimbursed.

NEW ALLIANCE CASES

CSBA's Executive Committee or the Alliance Steering Committee has approved Alliance involvement in the following cases:

Reasonable Search and Seizure for Student Interviews

Greene v. Camreta/U.S. Supreme Court

Issue:

Is an interview of a child on school grounds by a social worker in the presence of law enforcement a "seizure" requiring, absent exigent circumstances, that a warrant, court order, or parental consent first be obtained?

What this case is about:

A social worker, accompanied by an armed deputy sheriff, interviewed a nine-year-old girl on school grounds regarding allegations of child molestation by her father. The child was removed from the home three days later and the father charged with sexual abuse. A physical examination failed to determine whether abuse had occurred, the child recanted her claim, and was returned to her mother's custody. The mother sued on behalf of herself and her child alleging that the "seizure" (i.e., the questioning) of her daughter at school violated the Fourth Amendment of the Constitution. The federal district court ruled in favor of the defendant and the mother appealed.

The 9th Circuit held that the "seizure" was unconstitutional. The court found that because of the presence of law enforcement objectives in the interview (police investigation and presence at child's interview) the traditional Fourth Amendment protection applied – meaning a warrant, court order, parental consent, or exigent circumstances is required before the questioning can occur.

Defendants filed a writ of certiorari with the U.S. Supreme Court. In October 2010, the Supreme Court granted review.

Why this case is important:

Although the school district is not named as a party, this case presents a problem for school district officials when acquiescing to interviews by child protective services or law enforcement on school grounds. Oregon's mandated reporter law is similar to California law which authorizes interviews of a suspected victim of child abuse during school hours and on school premises. This case presents district staff with a tough decision: should they allow the interview to proceed even though it may be unconstitutional? Although it is the responsibility of law enforcement, not district personnel, to determine if the questioning is lawful, the district and district staff could be held liable should they allow an "unconstitutional" interview to proceed.

Role of the Alliance:

The Alliance joined in an amicus brief filed by the California State Association of Counties and the League of Cities requesting Supreme Court review and, now that the case will be heard, it's likely that the Alliance will join in another amicus brief.

Teacher's Right to Free Speech in Classroom

Johnson v. Poway USD/9th Circuit Court of Appeal

Issue:

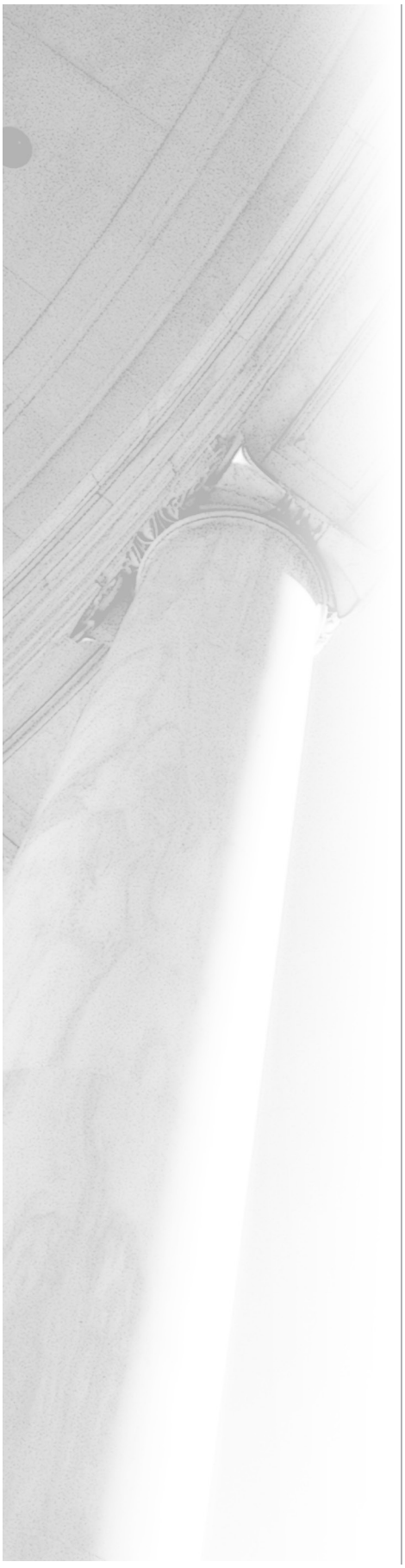
To what extent may a district regulate a teacher's freedom of speech in the classroom on issues not related to the curriculum?

What this case is about:

Johnson, a math teacher, displayed large banners in his math classroom with phrases that were a hybrid of national historical/religious messages. The banners were large and referenced God. A fellow teacher complained and the school board ordered Johnson to remove the banners on the grounds that the banners violated a school policy that limits religious messages in the classroom. Although none of the individual phrases on the banners were a problem, the district believed that the combined influence of the banners "over-emphasized" God and conveyed a Judeo-Christian viewpoint.

Johnson refused to remove the banners believing that he was singled out for discriminatory treatment based on the viewpoint of his message. Other teachers in the school and district were permitted individual displays in their classrooms, including a display of Tibetan prayer flags, posters of the Dalai Lama, Mahatma Ghandi and Ghandi's "Seven Deadly Sins." Eventually Johnson removed the banners and then sued.

The federal District Court held that the appropriate constitutional test for determining whether Johnson's rights were violated would be a "forum" analysis. Under that test, the court found that the district had created a "limited public forum" since faculty were allowed to display items in their classroom on non-curricular subjects by posting banners and posters. The court held that the district's decision with regards to Johnson's banners was not content-neutral and resulted in impermissible viewpoint discrimination. The district appealed. The district argues that the appropriate constitutional test should not be a "forum analysis" but instead be an analysis based on a public employer's right to regulate an employee's speech.



Why this case is important:

By holding that a district practice that permits teachers to display personal items in the classroom must be viewpoint neutral, this case restricts how districts may direct teacher communications with students. Although the Advisory and Steering Committees' expressed concern about the bad facts in the case (i.e., it appears that the district selectively squelched one teacher's speech based on the content of the speech), the constitutional test used by the court creates a problem for all districts.

Role of the Alliance:

The Alliance joined in an amicus brief filed in the 9th Circuit Court of Appeal by the National School Boards Association at the urging of the Alliance and the district.

Applicability of State Wage Orders to Public Employers

Sheppard v. North Orange County ROP/California Court of Appeal

Issue:

Do minimum wage orders promulgated by the Industrial Welfare Commission apply to public employers, such as school districts and ROPs?

What this case is about:

The plaintiff was a part-time vocational instructor at the North Orange County ROP. His suit arises from a document that he was required to sign prior to each school year which states that part-time assignments require 20 minutes of unpaid preparation time for each hour of classroom/lab instruction.

In the private sector, wage and hour law is governed principally by the Labor Code and a series of industrial and occupational regulations called Wage Orders. The state Industrial Welfare Commission was a state agency that promulgated 18 separate wage orders to regulate wages, hours, and working conditions of private sector employees in a variety of different industries. Although the IWC was defunded by the Legislature in 2004, the wage orders remain in effect.

The plaintiff claims that NOCROP's failure to pay wages for preparation time is a violation of a wage order. If the wage order does apply, the plaintiff would receive minimum wage as compensation for his preparation time. Another issue raised by the case is whether NOCROP, as a Joint Powers Agency of school districts, is a "political subdivision of the state" and thus, like a school district, generally exempt from the Labor Code.

The trial court rejected plaintiff's claims and plaintiff appealed.

Why this case is important:

It has historically been understood that public sector employers (such as school districts) are not subject to the provisions of the Labor Code, and the implementing wage orders, unless the underlying Labor Code statute specifically references public entities. If the court rules otherwise, then public employers (school districts, cities, counties) would be subject to additional requirements beyond those already imposed by federal law, the Education Code, and city charter provisions. An adverse ruling would also open up the door to increased litigation by public employees.

Role of the Alliance:

The Alliance filed an amicus brief in the appellate court on behalf of NOCROP. The League of Cities and California State Association of Counties joined in the Alliance's brief.

RULINGS/SETTLEMENTS IN ACTIVE ALLIANCE CASES

The following section discusses cases in which the Alliance has filed a lawsuit or an amicus brief and where there has been a court ruling.

Statewide Benefit Charter Schools

CSBA/ELA, CTA, ACSA, Stockton USD v. SBE/California Court of Appeal/California Supreme 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 district or county before granting the charter statewide?

Alliance activities:

In a major victory for the Alliance, the appellate court overturned the lower court decision by holding that the SBE failed to make the necessary findings of fact when it approved the statewide charter petition filed by Aspire Public Schools, Inc.

Case status:

Statewide benefit charter schools 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 the SBE is considered the charter school operator. In 2007, the SBE approved the petition of Aspire Public Schools to operate a statewide benefit charter in Stockton USD and LAUSD. The Alliance filed suit against the SBE based on the fact that, when approving Aspire's petition, the SBE had not made the specific finding required by law as to whether Aspire's proposed charter would provide instructional services of a statewide benefit that could not be provided by a charter school operating within only one district or county.

The trial court dismissed the Alliance's lawsuit and rejected CSBA's interpretation that local control is strongly favored and that statewide benefit charters are a "narrow exception" to the usual process for charter school authorization.

The appellate court agreed with the Alliance that the SBE did not receive or review any evidence that a statewide charter—rather than a series of local charters approved by local boards—was necessary in order for Aspire to offer a statewide instructional program. The court noted that state law permits charter applicants to operate schools that offer similar services under local charters in a number of districts, and pointed out that as of 2005, Aspire was operating 17 charter schools chartered by seven different districts.

Both the SBE and Aspire have petitioned the California Supreme Court to overturn the appellate court's ruling.

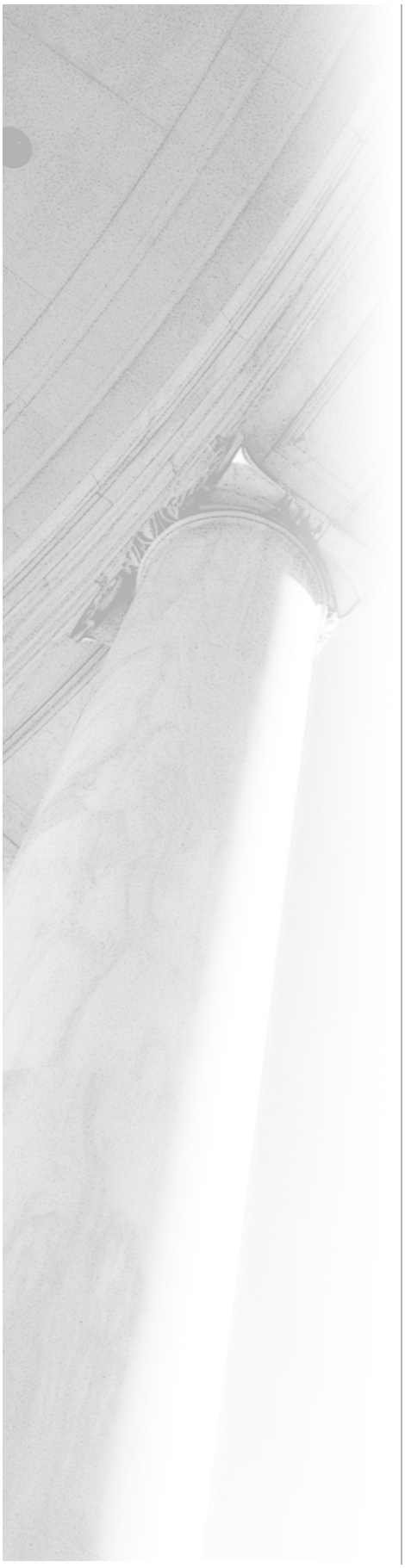
This case is an important limitation on the SBE's authority to approve statewide benefit charters as a way for charter school operators to bypass local districts in an attempt to avoid local oversight.

Mandated Cost Claim Audits by the State Controller's Office

Clovis USD, et al. v. Controller/California Court of Appeal

Issue:

Has the State Controller's Office imposed unreasonable documentation requirements in audits of mandated cost claims which prevent districts from receiving reimbursement for state-mandated costs?



Alliance activities:

Through financial and amicus support provided by the Alliance, local educational agencies have gained a major victory in funding for mandates. An appellate court has ruled that the Contemporaneous Source Document Rule is an underground regulation and thus the SCO cannot apply the rule to claims in the Collective Bargaining Program, School District of Choice Program, Emergency Procedures/Earthquake Procedures/Disaster Program, and Intradistrict Attendance Program.

Case status:

The SCO audits reimbursable mandate claims filed by LEAs typically years after their submittal. A number of problems have arisen with the auditing procedures relied upon by the SCO for 1998-2003 claims, which resulted in a total denial or substantial reduction of many claims. Most typically, the problem is a result of the SCO's demand for CSDR for staff time, a previously unknown requirement and not set out in Parameters and Guidelines issued by the Commission on State Mandates for the claims. In 2006, several districts sued the SCO.

The trial court partially upheld the SCO's requirements and the parties appealed. The Court of Appeal determined that the CSDR was an underground regulation unless specifically provided for in the claiming Ps & Gs for these specific mandates. For the four mandates in question, the Ps & Gs did not include the requirement thus a total audit penalty of $7.9 million has been voided for the districts that are parties to this litigation. When the decision is applied to pending audit challenges by other LEAs for the years in question, an additional $3.5 million in penalties may be set aside.

In January 2010, the Ps & Gs for two of these mandated programs were amended to include the CSDR requirement and similar changes are pending for the other two mandates. The retroactive application of this new requirement will be contested in court if the CSDR is applied by the SCO to claims in these programs for 2004-2009. Currently, there are pending claims for these four programs totaling an estimated. $120.5 million.

This appellate court decision is important to school districts as a part of the state's continuing strategy to reduce the state's liability for mandated costs has been voided.

Timeline for Commencement of Dismissal Hearing

Kaye v. San Leandro USD/California Court of Appeal

Issue:

Is the 60-day timeline for commencement of a hearing on the charges for dismissal of a certificated employee mandatory?

Alliance activities:

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

Case status:

The parties have settled, thus there will no court ruling.

This case dealt with the process and timeline for commencing a hearing for dismissal of a certificated employee. By law the hearing "shall commence within 60 days of the employee's demand for a hearing." The trial court ruled that the 60-day timeline was mandatory and prohibited the dismissal from going forward. The district argued that, even if the hearing date was set after the 60-day timeline, the timeline was not mandatory and should not act like a statute of limitations which prevents the case from moving forward. Although it appeared that mistakes in paperwork had been made, the Alliance filed an amicus brief in support of the district in order to protect the legal rights of all districts, especially since the error was not prejudicial to the employee.

OTHER ACTIVE CASES

A court decision is pending in the following cases in which the Alliance has filed/will file an amicus brief or has initiated litigation:

Requirement to Arbitrate Preempted Law

UTLA v. LAUSD/California Supreme Court

Issue:

Can courts compel binding arbitration over a board's approval of a charter school petition when the collective bargaining provisions upon which the grievance is based are preempted by the Education Code?

Split Roll Parcel Tax

Beery/Borikas v. Alameda Unified School District/California Court of Appeal

Issue:

Does a parcel tax which charges different rates for residential and commercial parcels violate the requirement that the tax be "uniform?"

Use of Public Funds for Campaign Communications

CSBA et al v. Fair Political Practices Commission/Sacramento County Superior Court

Issue:

Has the Fair Political Practices Commission exceeded its statutory authority by adopting regulations regarding the use of public funds for communications about ballot measures?

Bargaining of the Decision to Layoff Employees

International Association of Fire Fighters, Local 188 v. PERB (City of Richmond, RPI)/California Supreme Court

Issue:

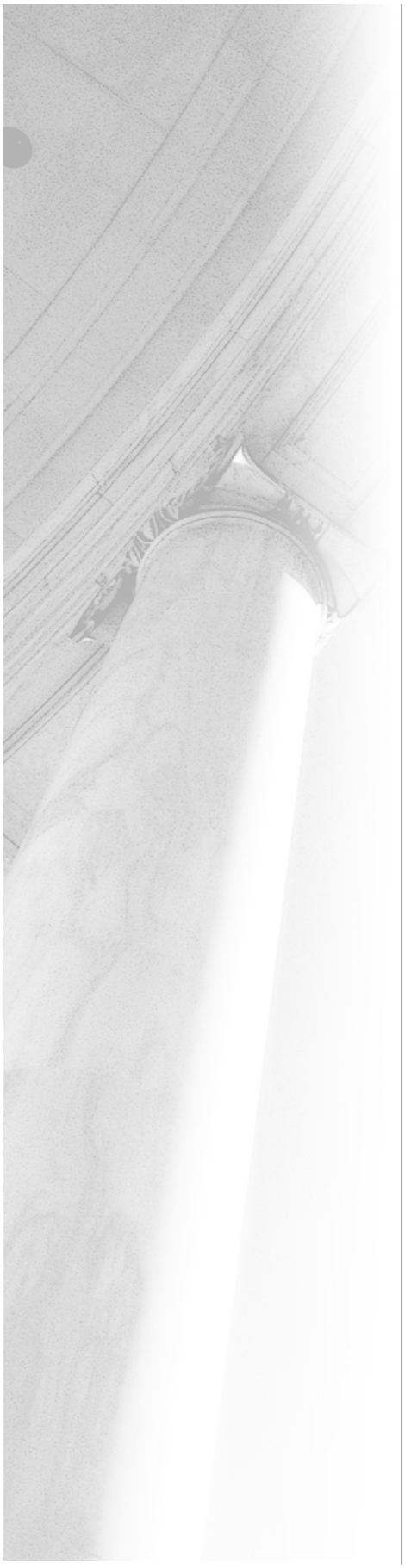
Is the decision to lay off employees a mandatory subject of collective bargaining under the Meyers-Milias-Brown Act?

Proposition 39 Charter School Facilities Regulations

CSBA/ELA et al. v. SBE et al./California Court of Appeal

Issue:

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



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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