



education legal alliance



annual report **2017**





Dear Member:

I am genuinely grateful for your membership in CSBA's Education Legal Alliance (ELA). It is only through your generous support that the achievements of the ELA are possible. Since its establishment, the ELA has served as the pre-eminent legal advocate for the cause of school districts, county offices of education (COEs), and other local educational agencies.

Throughout 2017, the ELA was unrelenting in its drive to carry out its mission of defending the interests of California's public schools and the children they serve, and of advocating on their behalf. The ELA was a critical voice before the courts and state administrative agencies, pursuing justice and preventing adverse outcomes for public schools statewide, potentially resulting in hundreds of millions of dollars in financial savings to them. The ELA filed numerous amicus briefs in support of school districts, COEs, and other local government agencies in a range of cases, including *United Educators of San Francisco v. California Unemployment Insurance Appeals Board* and *San Francisco Unified School District and Summerhill Winchester, LLC v. Campbell Union SD*. These cases, as well as the others contained in this report, represent the ELA's ongoing efforts on behalf of districts. Additionally, the ELA released useful and reliable legal updates and guidance on various topical issues throughout the year.

As we continue to face the legal challenges that will arise as districts and COEs serve California's more than six million children, be assured that the ELA stands ready to do all that is necessary to facilitate the mission of public education in California, including taking legal action on behalf of schools whenever and wherever necessary. This noble purpose can only be achieved with the robust support of educational leaders like you, and so I urge you to continue to support the ELA at this pivotal time.

If you have any question about the ELA or the benefits of ELA membership, please contact ELA staff at (800) 266-3382 or legal@csba.org.

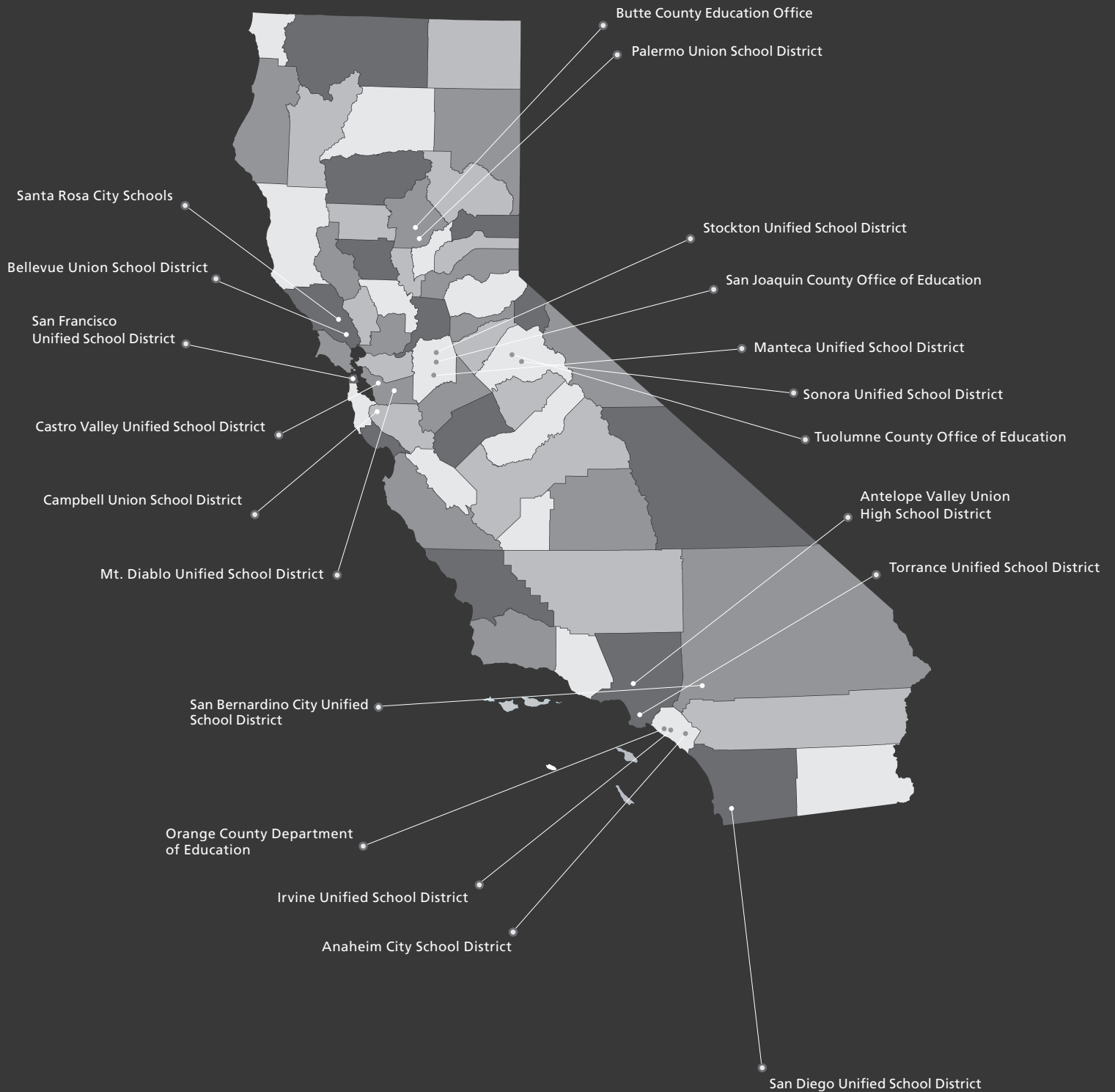
Sincerely yours,

Vernon M. Billy
CEO & Executive Director,
California School Boards Association

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Members with whom the ELA worked with in 2017





we fight better when we stand together

What is the Education Legal Alliance?

CSBA's Education Legal Alliance (ELA) is a consortium of school districts, county offices of education, and Regional Occupational Centers/Programs that voluntarily joined together in 1992 to create a powerful force to pursue and defend a broad spectrum of statewide public education interests before state and federal courts, state agencies, and the legislature. The ELA initiates and supports legal activities in areas of statewide significance to all California schools. Working with school attorneys, the efforts of the ELA have proven highly effective in protecting the interests of schools and the students they serve. Potential matters are reviewed and approved by a broad-based steering committee of board members, superintendents, and education leaders. There is also a legal advisory committee of noted school law attorneys to help provide legal analysis and recommendations to the steering committee.

The ELA is funded exclusively by contributions from its members, who are also members of CSBA.

What are the benefits of membership in the Education Legal Alliance?

- The ELA files amicus briefs and letters in court to support its members on legal issues of statewide importance.
- The ELA initiates litigation on various issues of statewide importance and often looks to its members to serve as co-plaintiffs in those cases.
- The ELA weighs in on legislation that impacts its members on issues of statewide importance.

"Local school districts and county offices of education strive to provide a high quality education that prepares all student for success in college, career and civic life. Our ability to do this is defined, to a substantial degree, by how the courts interpret the laws of California. CSBA's Education Legal Alliance keeps districts and county offices apprised of legal developments and ensures that our core interests like full and fair funding of public schools, improved outcomes for all students, and the preservation of local control, are ably represented in the courts."

*—Susan Henry, Board Member,
Huntington Beach Union HSD and CSBA President*



education legal alliance steering committee



Susan Henry, Chair

*CSBA President
Huntington Beach Union HSD*



Dr. Michael Lin

*Superintendent
Corona-Norco USD*



Mike Walsh, Vice Chair

*CSBA President-elect
Butte COE*



Robert Miyashiro

*Vice President
School Services of California*



Vernon M. Billy

CSBA CEO & Executive Director



Dr. Kirk Nicholas

*Superintendent
Lammersville Joint USD*



Darryl R. Adams

*Director-at-Large African American
Norwalk-La Mirada USD*



Rosalina Rivera

*Superintendent
Delano Union ESD*



Leighton Anderson

*CSBA Delegate, Region 24
Whittier Union HSD*



Paige Stauss

*Director, Region 4
Roseville Joint Union HSD*



Peter Birdsall

CCSESA Executive Director



Timothy Taylor

*County Superintendent
Butte COE*



education legal alliance advisory committee



Mike Smith, Chair
Lozano Smith



Peter K. Fagen
Fagen Friedman & Fulfrost LLP



Ronald Wenkart
Orange County Office of Education



Paul Loya
Atkinson, Andelson, Loya, Ruud & Romo



Spencer Covert
Parker & Covert LLP



Sue Ann Salmon Evans
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education legal alliance staff



Elaine Yama-Garcia
Associate General Counsel



Bode Owoyele
Staff Attorney



Mike Ambrose
Staff Attorney



Anita Ceballos
Legal Specialist

current activities





Adequacy and Opportunity Gaps

In 2017, CSBA published a second report in its series on adequate funding, *Meeting California's Challenge – Access, Opportunity, and Achievement*, as part of the organization's continued effort to highlight the benefits of an adequately funded education system for California. The report aims to answer the question, "What does an adequately funded education system look like?" by describing essential ingredients of a strong education system and outlining key research and evidence that point to their urgent need. CSBA and the Education Legal Alliance have met with school board and county board of education members throughout the state this year to discuss adequate funding, the opportunity gap, and the necessity for greater funding in California to reach our collective vision of college and career readiness for all students.

This work builds upon the work of CSBA's Adequacy Committee, which was formed in 2015 to focus on the issue of funding adequacy in K-12 public education. Chaired by then CSBA President Jesús Holguín, the purpose of the Adequacy Committee was to assist CSBA's legal team in the *Robles-Wong v. California* lawsuit, develop data and push for more funding for education, and add value to the conversation about adequate funding and opportunity gaps in California in light of the Local Control Funding Formula. The Committee brought together CSBA directors and delegates, superintendents and other district administrators, and experts in the areas of curriculum, instruction, and school finance.

"There are many different forms of advocacy, but the advocacy which takes place in the courts is often unsung. CSBA's Education Legal Alliance plays a crucial behind-the-scenes role in defending and advancing the interests of public school districts and county offices of education. In 2017, that work included amicus briefs in support of the sovereign immunity held by the Orange County Department of Education as an arm of the state (Sato v. Orange County Department of Education), fighting against additional, burdensome restrictions on districts' ability to assess Level 1 fees (Summerhill Winchester, LLC v. Campbell Union School District) and supporting districts' ability to reach developer-fee agreements to mitigate the impact of new housing construction on local schools (Burbank Housing Development Corp., et al. v. Bellevue Union School District & City of Santa Rosa High School District)."

— Mike Walsh, Board Member, Butte County
Board of Education and CSBA President-elect

The Committee's final report, "California's Challenge — Adequately Funding Education in the 21st Century," included an updated estimate of the cost of adequately funding education in California and closing opportunity gaps.



Proposition 98 Rebenching

CSBA v. Cohen (2015) Case No. 34-2015-80002182 - Sacramento County Superior Court

Member(s) Involved:

None

Summary:

This lawsuit alleges that the State's failure to "rebench" the Proposition 98 minimum guarantee for the 2015-16 budget is an unconstitutional manipulation of the guarantee and sets a dangerous precedent that must be challenged. Proposition 98 was approved by voters in 1988 to ensure a guaranteed minimum spending level each year for K-12 public schools and community colleges by providing them with a stable and predictable source of funding that grows with the economy and state General Fund revenues. State spending on childcare had always been included within the Proposition 98 minimum guarantee funding. In 2011, however, the State moved most of the funding for childcare outside of Proposition 98 for state budget purposes and adjusted or "rebenched" the minimum guarantee lower to reflect the removal. In the 2015-16 budget, the State added some childcare spending back into Proposition 98, used those funds to help meet the guarantee, but did not rebench the minimum guarantee calculation higher to reflect this additional education expense.

In October 2016, the Sacramento County Superior Court granted CSBA's petition for writ of mandate, finding the State's failure to rebench the minimum guarantee was inconsistent with the statutory scheme established to implement the constitutional provisions of Proposition 98.

Status/Outcome:

The state appealed in January 2017, and the filing of appellants' brief was extended to November 1, 2017.



Mandate Redetermination and Offsetting Revenues

CSBA v. State of California (2013) Case No. A148606 - California Court of Appeal, First District

Member(s) Involved:

Butte County Office of Education; Castro Valley Unified School District; San Diego Unified School District; San Joaquin County Office of Education

Summary:

The ELA has challenged the statutory scheme regarding mandate reimbursement by arguing that the scheme as a whole frustrates the right of reimbursement under the California Constitution. Districts and county offices of education are being required to provide services without a reasonable expectation of timely reimbursement. Plus, the procedures for reimbursement impose an unreasonable burden on the right to reimbursement. The lawsuit explicitly challenges the statutes which allow the State to eliminate the reimbursement obligation by “redetermining” or reconsidering whether a mandate exists.

Because of subsequent changes in state law, the ELA has had to amend its complaint to challenge various new tactics that the State has devised to avoid reimbursing districts and county offices of education for their mandate claims. One particularly egregious tactic is to identify “offsetting revenues” as reimbursement for mandate claims. These offsetting revenues are revenues that districts and county offices of education would already receive; thus, districts receive no new or additional revenue under this tactic. The State has used offsetting revenues to avoid reimbursing districts and county offices of education for the Behavioral Intervention Plan and the High School Science Graduation Requirements mandates.

The trial court ruled against the ELA, holding that the State could use existing revenues as it saw fit, including identifying them as “offsetting revenues” for mandate reimbursement purposes. The ELA sought to amend its complaint, to focus more specifically on whether Proposition 30 funding can be used as offsetting revenue, given that districts have “sole authority” over how those funds are spent. The judge ultimately denied the ELA’s motion to amend and, as allowed by law when a trial does not commence within five years, granted the State’s motion to dismiss the lawsuit.

Status/Outcome:

ELA appealed the Superior Court’s ruling on CSBA’s behalf in June 2016. Briefing is complete, and oral argument is set for December 14, 2017.



Statewide Benefit Charter

CSBA v. State Board of Education (2011) Case No. A136327 - California Court of Appeal, First District

Member(s) Involved:

Stockton Unified School District

Summary:

The ELA challenged the 2007 approval by the State Board of Education (SBE) of Aspire Public Schools' statewide benefit charter petition because the SBE had used an incorrect interpretation of the applicable law. Specifically, the lawsuit alleged that the SBE failed to properly find that Aspire's program had a statewide benefit and included several procedural claims. The ELA was joined in this lawsuit by the following co-plaintiffs: the Association of California School Administrators, the California Teachers' Association (CTA), and Stockton Unified School District. In July 2010, the Court of Appeal ruled in favor of the ELA on the grounds that the ELA has presented claims that could be adjudicated.

In March 2012, on remand, the Alameda County Superior Court ruled in favor of the ELA and then, in June 2012, issued a writ of mandate in favor of the ELA directing the SBE to set aside its approval of Aspire's statewide benefit charter and to use only policies and procedures that have been promulgated in compliance with the adjudicatory procedures of the Administrative Procedures Act (APA) for its consideration of statewide benefit charter petitions. The Court gave the SBE one year to comply with its orders. Since that time, the ELA agreed to a settlement on all but one issue. Under the terms of the settlement, Aspire agreed to surrender its statewide benefit charter and pursue chartering all of its schools at the local level. Aspire also will be ineligible to seek a statewide benefit charter for a five-year period. The SBE and Aspire agreed to pay the plaintiffs \$300,000 (\$150,000 each) in attorney fees and costs.

In regards to the proper procedure the SBE must use to consider statewide benefit charter petitions, which was the one remaining issue that was appealed, the Court of Appeal held that reference in the Education Code to the adjudicatory procedure provisions of the APA rather than its rulemaking procedure was a legislative error and should not be given effect. However, the court again remanded the case to the trial court to determine whether the SBE's policies and procedures for considering statewide benefit charters were adopted in compliance with the rulemaking provisions of the APA.

Status/Outcome:

After extensive settlement discussions, CSBA and CTA decided to dismiss the remaining issue in the case to preserve their ability to challenge future SBE procedures and actions impacting statewide benefit charter schools, if necessary.

"ELA is an investment districts make in one another and in the well-being and future of California students. Using our collective energies and the breadth and depth of resources provided by ELA, we emerge as much stronger advocates for public education than we could ever be individually."

— Dr. Michael Lin, Superintendent,
Corona-Norco USD



California Unemployment Insurance Appeals Board (CUIAB)

United Educators of San Francisco v. CA Unemployment Insurance Appeals Board (2015) Case No. S235903 - California Supreme Court

Member(s) Involved:

San Francisco Unified School District

Summary:

This case involves the interpretation of the California Unemployment Insurance Code section 1253.3(b) and (c), which state that unemployment benefits “are not payable to any individual ... during the period between two successive academic years or terms ... if there is a contract or a reasonable assurance that the individual will perform services for any educational institution in the second of the academic years or terms.” In 2011, a group of 26 members of the United Educators of San Francisco (UESF) (substitute teachers and paraprofessional classified employees) applied for unemployment benefits for the period of time between May 27 and August 15. The Superior Court, based on the plain meaning of the statute, ruled that substitute teachers, 10-month classified employees, and school employees who do not work all 12 months are not eligible for unemployment benefits during the summer months when school is normally not in session, and rejected the union’s argument that summer school session should be seen as part of an academic year or term.

The Superior Court also invalidated a previous California Unemployment Insurance Administrative Board decision which held that a school-term substitute employee who is available, eligible, and on a list to work during summer school is eligible for unemployment benefits if he/she is unable to get a summer school position.

ELA filed its amicus brief in November 2015, in support of San Francisco USD’s favorable trial court ruling that working during the District’s summer school session does not override the prohibition against receiving benefits per Unemployment Insurance Code 1253.3. On June 6, 2016, the appellate court affirmed the lower court’s decision. In upholding the Superior Court’s ruling and finding that summer school is not an “academic term” or “year,” the appellate court cited to ELA’s amicus brief, noting that the California Department of Education treats the traditional academic calendar to mean the period when school is regularly in session for all students, and does not include summer school. Justice Dondero wrote, “[w]e are not unsympathetic to the loss of wages incurred during periods of academic hiatus. However, in effect what the claimants in this case are requesting is that the government should provide them with a full year’s income because they have agreed to work and be paid for only 41 weeks each year.”

Status/Outcome:

The union’s petition for review was granted by the California Supreme Court in September 2016. ELA filed its amicus brief in April 2017. The case is fully briefed and parties await oral argument.



Public Records Act (Legal bills subject to PRA)

County of LA Board of Supervisors v. LA Superior Court (2015) Case No. S226645 - California Supreme Court

Member(s) Involved:

None

Summary:

This case represents a classic confrontation between two strong public policy laws: the California Public Records Act (CPRA) which embodies a strong preemption in favor of disclosure and the attorney-client privilege which embodies a strong policy of preserving the confidential relationship between an attorney and his/her client. The ACLU had made a PRA request stating that “scorched earth” litigation tactics by the County’s lawyers aimed at dragging out cases brought by inmates alleging excessive use of force in county jails would be reflected in the billing entries submitted by outside counsel. The Superior Court found that the County had failed to show that the billing statements were confidential and ordered their release.

On appeal, this ruling was reversed, with the court finding that attorney billing records were protected by the attorney-client privilege in Evidence Code Section 952 and as such, were exempt from production under the PRA. The ACLU filed a petition for review with the California Supreme Court. On February 16, 2016, ELA filed an amicus brief with the California Supreme Court supporting the district.

Status/Outcome:

On December 29, 2016, in a 4-3 ruling, the California Supreme Court concluded that invoices related to pending and active legal matters or issues, including the amount of legal fees, are “categorically protected” by attorney-client privilege. Invoices for concluded matters are disclosable subject to redactions when necessary to preserve confidentiality of portions of records that are by law exempted from disclosure.

“By combining the resources of hundreds of local educational agencies, the ELA provides California’s schools with a strong voice representing public education, and the resources to tackle the state’s most pressing education issues. From fighting for adequate funding to upholding the right to a free, appropriate public education for all students, the ELA ensures that education remains a top priority in California.”

—**Namita Brown**, Partner, Fagen Friedman & Fulfrost, LLP
and CCSA President-elect



Public Records

City of San Jose v. Superior Court (2015) Case No. S218066 - California Supreme Court

Member(s) Involved:

None

Summary

This case concerns the scope of the California Public Records Act (CPRA). The specific question is whether the CPRA requires local agencies, such as a school district, to disclose upon request, otherwise disclosable communications of board members or their staff stored on their personal electronic devices and on private network accounts that are not accessible to the agency. The Court of Appeal ruled that the CPRA does not impose such a duty on the grounds that retrieving such communications would be intrusive to the privacy rights of individuals and requirements on the public agency to satisfy such a request would be extremely burdensome.

The ELA filed an amicus brief in July 2016, urging the California Supreme Court to uphold the Court of Appeal decision. The ELA's brief expounds on the practical impact of expanding the CPRA to encompass communications such as emails and texts sent or received by public officials via their private electronic devices and stored on their private accounts.

Status/Outcome:

On March 2, 2017, the California Supreme Court ruled that electronic communications sent or received by public officials through private accounts are not excluded from disclosure under the California Public Records Act because they have been sent from, or received in, a personal account or personal device.



Special Education Services

California Department of Health Care Services v. Director, California OAH, Real Parties in Interest Tuolumne COE and Sonora ESD (2015) Case No. F071023 - California Court of Appeal, Fifth District

Member(s) Involved:

Sonora Elementary School District; Tuolumne County Office of Education

Summary:

This case involves whether school districts and county offices of education or the California Department of Health Care Services (DHCS) should pay for certain special education services. In this case, the parents sued DHCS for unilaterally discontinuing physical and occupational therapy. DHCS then brought Tuolumne COE and Sonora ESD into the case. However, both Tuolumne COE and Sonora ESD settled with the parents and were dismissed from the case by the administrative law judge (ALJ). DHCS continued with the case on its own and the ALJ ultimately ruled in favor of the parents and ordered that DHCS provide physical and occupational therapy to the student. Seeking to overturn the ALJ's ruling, DHCS then filed a writ of mandate in Superior Court and sought declaratory relief against Tuolumne COE and Sonora ESD, claiming/alleging that they were responsible for paying for the student's physical and occupational therapy. The Superior Court ruled against DHCS and it filed an appeal.

The ELA filed an amicus brief in January 2016, in support of Tuolumne COE and Sonora ESD, arguing that DHCS could not seek declaratory relief against Tuolumne COE and Sonora ESD because they both had been dismissed from the case and because DHCS had breached the interagency agreement to first attempt to resolve disputes through the resolution process.

Status/Outcome:

On November 29, 2016, the appellate court affirmed the lower court's decision that the Department of Health Care Services could not seek declaratory relief against Tuolumne COE and Sonora ESD because it was a breach of an inter-agency agreement to first attempt to resolve disputes through the resolution process.



Special Education Attorneys' Fees Award

K.G. v. Irvine Unified School District (2013) Case No. 12-57315 - Federal Court of Appeals, Ninth Circuit

Member(s) Involved:

Irvine Unified School District; Orange County Office of Education

Summary:

A student with a disability filed a due process action against the Irvine Unified School District, the Orange County Office of Education, and the California Department of Education (CDE) alleging that one of the three was responsible for continued funding of the student's residential treatment center program. The student and the District argued that CDE was financially responsible and the federal district court agreed. On appeal however, the Ninth Circuit held the District responsible rather than CDE. Though the student and the District were never on opposite sides, the student sought attorney fees from the District and the district court agreed.

The basic question in this case is whether attorney fees are "inequitable" given that none of the student's attorney fees were incurred arguing against the District. Allowing attorney fees in a situation where the student plaintiff is not in opposition to a district would increase costs of litigation for districts regardless of the outcome.

The district court's decision has been appealed and the ELA filed an amicus brief in support of the District's position.

Status/Outcome:

On April 13, 2017, the Ninth Circuit Court of Appeals affirmed the district court's grant of relief from judgment and found that the student, K.G., was entitled to at least some attorney's fees under the Individuals with Disabilities Education Act (IDEA). The court found that K.G. qualified as a prevailing party under the IDEA, and an award of some amount of fees incurred in achieving this end was justified because this victory was not trivial or merely technical.



Special Education

Endrew F. v. Douglas County School District (2017) Case No. 15-827 – U.S. Supreme Court

Member(s) Involved:

None

Summary:

The plaintiff-appellant student in the case, Endrew F., was diagnosed with autism at two years old and ADHD at three. He attended Douglas County schools in Colorado from preschool through fourth grade, and received special-education services, including individualized education programs (IEPs) tailored to meet his needs. At the conclusion of fourth grade, Endrew's parents decided he was not making meaningful progress, rejected the IEP proposed by the District for fifth grade, and enrolled him in a private school that specializes in educating autistic children. Endrew's parents then turned to the District for reimbursement of his private-school tuition and related expenses, arguing that Endrew was not provided a "free appropriate public education" (FAPE), as required under the Individuals with Disabilities Act (IDEA).

The U.S. Court of Appeals for the Tenth Circuit had ruled earlier in this case that a "free appropriate public education" requires an "educational benefit [that is] merely ... more than *de minimis*," and that because Endrew F. had received "some education benefit" from his school district, he was not denied a "free appropriate public education" under the IDEA.

The ELA filed an amicus brief with the National School Boards Association (NSBA) in the case, writing in support of the existing standards and encouraging the Supreme Court not to set a new national standard for FAPE.

Status/Outcome:

On March 22, 2017, the Supreme Court overturned the Tenth Circuit Court's ruling. The Supreme Court held that in order "to meet the substantive obligations under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances," rather than an IEP to "confer educational benefit that is merely more than *de minimis*." The Supreme Court's ruling did not set a bright line rule regarding what level of education a student with a disability must receive in order to receive FAPE, but simply reinforced the general approach to providing a free appropriate public education under the IDEA.



Special Education

M.C. v. Antelope Valley Union HSD (2017) Case No. 14-56344 – Federal Court of Appeals, Ninth Circuit

Member(s) Involved:

Antelope Valley Union HSD

Summary:

In this case, plaintiff M.C.'s parent filed a due process complaint on August 14, 2012, with the Office of Administrative Hearings (OAH) alleging that Antelope Valley Union High School District denied M.C. a free appropriate public education (FAPE) by failing to offer and provide him appropriate related services. M.C. suffers from a genetic disorder resulting in blindness among other academic and physical deficits. M.C. was provided services on an individualized education program (IEP), signed by his parent, although M.C.'s parent did not agree the IEP provided him FAPE. The IEP signed by M.C.'s parent mistakenly offered him 240 minutes per *month* of service provided by a teacher of the visually impaired (TVI). The IEP was supposed to state 240 minutes per *week*, and although the district realized the mistake quickly, it did not notify his parents until over a month later. The district amended the IEP by changing the offer to 240 minutes per week without notifying M.C.'s parent or providing a copy of the IEP Amendment. The Administrative Law Judge (ALJ) denied M.C.'s claims for relief, and the district court affirmed the decision of the ALJ.

On March 27, 2017, the Ninth Circuit reversed and remanded the case back to the district court for findings consistent with their opinion. The Ninth Circuit concluded M.C.'s parent was deprived of her right to participate in the IEP process and that the errors in the IEP document constituted a denial of FAPE, even though the error had not resulted in a substantive loss of services. The Ninth Circuit panel further found that the Individuals with Disabilities Education Act (IDEA) provides parents a right to participate in every step of the IEP drafting process, including monitoring and enforcement of the IEP. The typographical error on the IEP meant M.C.'s parent could not adequately use the IEP to monitor and enforce the services provided.

The district filed a petition requesting the Ninth Circuit to review the panel's decision before eleven Ninth Circuit judges (petition for rehearing en banc). The ELA filed an amicus brief in support of the district's petition.

Status/Outcome:

The Ninth Circuit declined to rehear the case but amended its opinion on May 30, 2017, in ways that were responsive to the ELA's and the district's concerns, including softening language in the opinion that originally implied that an IEP was subject to the same scrutiny as a legal contract.



Special District Assessment

Manteca Unified School District v. Reclamation District No. 17 (2014) Case No. C077906 - California Court of Appeal, Third District

Member(s) Involved:

Manteca Unified School District

Summary:

This case involves a conflict between Water Code section 51200, which specifically exempts school districts from having to pay reclamation district (RD) assessments, and Proposition 218 (approved by voters in 1996), which arguably limits the ability of local governments to be exempted from local assessments. Here, RD No. 17 had levied an assessment and had sought payment from Manteca Unified School District.

The District challenged the assessment in the Superior Court, relying on Water Code section 51200's explicit exemption of school districts from such assessments. RD 17, in turn, had argued that Water Code section 51200 was no longer valid in light of Proposition 218, which amended Section 4, Article XIII D of the California Constitution, to restrict the ability of local governments to exempt other local governments or agencies from such assessments. However, Prop. 218 also amended Section 1 of Article XIII D to state that it "does not give any agency new authority to assess a fee." The Superior Court ruled for the District, finding that the RD 17's reliance on Prop. 218 was misplaced in light of Section 1. RD 17 appealed and the ELA filed a brief in support of the District.

Status/Outcome:

On April 7, 2017, the California Court of Appeal, 3rd District, reversed the superior court judgment and found that Article XIII D, section 4 supersedes Water Code section 51200 and requires that parcels within a district that are owned or used by an agency "shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit." Because Manteca USD received a special benefit from the services, it could not be exempt from the assessments levied by the Reclamation District. Manteca USD filed a petition for review with the California Supreme Court, and the ELA filed an amicus curiae letter in support of the district's petition on June 23, 2017. The Supreme Court denied the petition for review on July 26, 2017.



Lease-Leaseback and Government Code section 1090

California Taxpayers Action Network v. Tabor Construction, Inc. and Mt. Diablo USD (2015) Case No. A145078 - California Court of Appeal, First District

Member(s) Involved:

Mount Diablo Unified School District

Summary:

In this case, the Court of Appeal addressed the same two basic questions as in *Davis v. Fresno USD*: (i) whether Government Code section 1090 applies to corporate consultants and (ii) whether the lease-leaseback agreement at issue in the case is valid. In December 2015, the ELA filed an amicus brief in support of Mt. Diablo USD and its use of lease-leaseback construction contracts. The ELA's brief argued that *Davis* was wrongly decided and, in the alternative if *Davis* was correctly decided, that the specific lease-leaseback agreement in this case was properly executed. (This case is very similar to *McGee and California Taxpayers Action Network v. Balfour Beatty Construction, LLC and Torrance USD*, with the difference being the specific components of the lease-leaseback agreement.)

Status/Outcome:

On May 2, 2017, the appellate court affirmed the dismissal of the taxpayers' claim challenging the validity of the lease-leaseback agreement, but reversed the dismissal of the conflict of interest claim, finding that the allegation that the developer was in a position to influence the school district's decision on the project was sufficient to state a claim of conflict of interest.



Developer Fee Agreements

Burbank Housing Dev. v. Bellevue Union SD & City of Santa Rosa HSD (2016) Case No. A148801 – California Court of Appeal, First District

Member(s) Involved:

Bellevue Union School District; Santa Rosa City Schools

Summary:

This case is an appeal of a trial court decision related to Burbank Housing Development Corporation's (Burbank Housing) legal challenge to two developer fee agreements that concern property owned by Burbank Housing. The fee agreements were entered into and recorded in 1996 between the prior property owner and each school district. After Burbank Housing purchased the property in October 2007, it challenged the agreements as requiring payment of developer fees over and above what the statutory scheme permits.

The trial court agreed with Burbank Housing, holding that the agreements were an impermissible attempt by the districts to supplement statutorily authorized fees, and ordering them to cease enforcement of the agreements and return any developer fees collected in excess of the fees authorized by state law. The trial court further held that the fee agreements were not exempted from the preemption provisions in Government Code Section 65995.

The districts argued on appeal that the trial court incorrectly treated these voluntary agreements as if they were involuntary fees imposed by the district on an unwilling landowner. The ELA filed an amicus brief on March 27, 2017, in support of the districts.

Status/Outcome:

The case is fully briefed and the parties are awaiting oral argument.



Developer Fees

Summerhill Winchester, LLC v. Campbell Union School District (2017) Case No. HO43253 – California Court of Appeal, Sixth District

Member(s) Involved:

Campbell Union School District

Summary:

In this case, the trial court ordered Campbell Union School District to refund the \$499,967.96 in fees paid by the developer of a condominium project in the district, including \$101,403.21 in interest. The trial court found that: (1) the fee study's statement that "in excess of" 133 homes were anticipated to be built was not an adequate methodology to describe the total amount of new housing needed, (2) the fee study's estimate that the number of students to be generated by the development was "in excess of" 67 students was not adequate methodology to estimate the number of students generated by the new development, and (3) the fee study did not adequately calculate the costs to house new students generated by the development because the costs were not based on *actual* construction plans for new school facilities. The District argued that the trial court's decision is contrary to existing case law with respect to the use of projections for housing units expected, students generated, and estimates of facilities costs. The ELA filed an amicus brief in support of the district on June 26, 2017.

Status/Outcome:

The case is fully briefed and the parties are awaiting oral argument.



Parent Trigger

Ochoa v. Anaheim City SD (2015) Case No. G052409 - California Court of Appeal, Fourth District

Member(s) Involved:

Anaheim City School District

Summary:

In this case, a number of parents had attempted to utilize the State's "Parent Trigger" law (See Parent Empowerment Act, Educ. Code Sections 53300-53303) to convert a local underperforming elementary school into a charter. The Anaheim City School District rejected the petition, and the parents sued. The trial court ruled for the parents, finding the District's decision to reject the petition unfair, unreasonable, arbitrary and capricious. The District appealed.

The ELA filed an amicus brief in March 2016, in support of the district's findings that the elementary school subject to conversion to a charter school was not a "subject school" under the Parent Trigger law because California had been granted a waiver by the United States Department of Education to forgo making "Annual Yearly Progress" (AYP) determinations for elementary school districts in 2013-14. Since failure to make AYP is one of the requirements necessary to become a "subject school" subject to the conversion to a charter school, and since the state will continue to be unable to make AYP determinations until a new accountability system is in place, the use of the Parent Trigger law is compromised and districts should not be held to an annual standard that cannot be measured or met.

Status/Outcome:

In its ruling in April 2017, the Court of Appeal affirmed the trial court's decision. The District filed a petition for review with the California Supreme Court on June 7, 2017, which the ELA supported, along with a request for de-publication of the appellate opinion. On July 12, 2017, the California Supreme Court denied the petition and the request for de-publication.



Probationary Employees

Sato v. Orange County Department of Education (2015) Case No. 15-56402 - Federal Court of Appeals, Ninth Circuit

Member(s) Involved:

Orange County Department of Education (OCDE)

Summary:

Plaintiff filed a lawsuit claiming that he was improperly dismissed from his employment. He served for two weeks as a probationary employee before his release. His complaint stated two claims: 1) a violation of 42 U.S.C. Section 1983 and 2) breach of contract. In his breach of contract claim, plaintiff argued that, because OCDE's employee guidelines state that probationary employees "can be terminated ... for failing to meet the expectations of the job," plaintiff was not an at-will employee and could only be dismissed for cause. As to his Section 1983 claim, he stated that he had a property interest in his employment and that by dismissing him without notice, process, or cause, OCDE violated his procedural and substantive due process rights. OCDE moved to dismiss Plaintiff's complaint, arguing that as an "arm of the state," it has sovereign immunity from such a lawsuit under the Eleventh Amendment to the U.S. Constitution.

Plaintiff argued that the Local Control Funding Formula (LCFF), the state's new funding formula, "vitiates" the basis for OCDE's claim of sovereign immunity with its shifting of education funding from state control to local control.

The federal district court held that the Section 1983 claim against OCDE was barred by sovereign immunity because the LCFF, although changing the education funding model, did not radically change the State's role or responsibility in providing funding to local school districts.

On April 29, 2016, ELA filed an amicus brief with the Ninth Circuit Court of Appeals to support the lower court's decision that the responsibility for funding public education in California primarily resides with the State and that the Eleventh Amendment bars a local agency like OCDE from being sued in federal court.

Status/Outcome:

On June 28, 2017, the Ninth Circuit ruled in favor of OCDE, finding that while LCFF changed school funding significantly in California, it did not alter the state's relationship with school districts and county offices of education in a manner as to disfavor their sovereign immunity protection. Plaintiff filed a petition for a writ of certiorari with the U.S. Supreme Court on September 25, 2017.



Longevity Pay

Palermo Teachers' Assoc., et al. v. Palermo Union School District (2016) Case No. C081510 – California Court of Appeal, Third District

Member(s) Involved:

Palermo Union School District

Summary:

In this case, the Palermo Teachers Association (The Association) brought a lawsuit arising out of compensation paid by the Palermo Union School District to its teachers based on their years of teaching outside of the school district and their years of teaching within the district.

Pursuant to the current Collective Bargaining Agreement (CBA), Palermo Union School District pays an “anniversary (longevity) increment” to teachers starting once they have provided 15 years of in-district service to the District. Similar CBA provisions have been in effect since at least 1990.

The Association filed the lawsuit asserting that the anniversary (longevity) increments are simply more “salary” and should be treated as additional “steps” on the District’s salary schedule, paid to all teachers with more than 15 years of teaching experience, regardless of where the experience accrued. The Association is arguing that the District therefore has failed to comply with its duty under Education Code Section 45028, which requires each teacher to be classified on the salary schedule on the basis of uniform allowance for years of training and years of experience, except if a school district and teachers association mutually agree to a salary schedule based on criteria other than a uniform allowance for years of training and experience.

The Association argued that longevity, regardless of where accrued, and “years of experience” under Section 45028 are identical and must be treated uniformly. The District’s position was that the anniversary increment in the CBA is allowed as negotiable under Section 45028 as criterion “other than years of experience.” The trial court found that the District’s “anniversary increment” does not violate Section 45028 because it is separate from the regular salary schedule and serves a different purpose. The salary schedule compensates teachers for their service in the classroom. The “anniversary increment” is a reward for loyalty to the District and an incentive to remain teaching in the District. The Association appealed.

The ELA filed an amicus brief on January 3, 2017, in support of the district and the trial court’s decision.

Status/Outcome:

The ELA was notified on March 22, 2017, that the parties have settled and the Appellant filed a request for dismissal of their appeal.



Deferred Action for Childhood Arrivals (DACA)

University of California v. U.S. Department of Homeland Security (and related cases) (2017) Case No. 17-cv-05211-WHA – Federal District Court, Northern District

Member(s) Involved:

None

Summary:

Four lawsuits challenging the rescission of DACA (Deferred Action for Childhood Arrivals) are proceeding together in the Northern District of California. The DACA program was implemented in 2012 and offered work authorization and a renewable two-year reprieve from deportation to unauthorized immigrants who were brought to the United States as children and met specific eligibility requirements. The Trump Administration announced in September 2017 that it will end the DACA program. There are 222,795 DACA recipients in California, more than a quarter of the program's total. One-third of all DACA recipients are enrolled in high school, one-fifth are enrolled in college, and one-fourth are enrolled in college and working at the same time. According to the Migration Policy Institute, approximately 5,000 teachers in California are DACA recipients. CSBA and the ELA were asked to sign onto an amicus brief in the consolidated DACA lawsuits identifying the challenges the rescission of DACA may create for students, schools, and governing boards in California.

Status/Outcome:

On November 1, 2017, an amicus brief was filed on behalf of CSBA along with NEA, ACSA, CTA, Berkeley USD, Moreno Valley USD, San Diego USD, West Contra Costa USD, Los Angeles County Board of Education, Los Angeles USD, Oakland USD, Sacramento City USD, and other associations.



Duty of Care Liability

Isabella Sanchez, a minor, etc. et al., v. San Bernardino City Unified School District (2017) Case No. CIVDS 1309504 – California Court of Appeal, Fourth District

Member(s) Involved:

San Bernardino City Unified School District

Summary:

This case stems from a tragic event, where a child crossing the street was struck by a car and severely injured. The child was walking to her school bus stop with her supervising neighbor when the child tried to cross the street mid-block and was struck by a car. The street had an intersection controlled by a traffic signal and a crosswalk. The parents of the child filed a lawsuit against the school district, among others, alleging a failure of a duty of care by the school district.

San Bernardino City Unified School District successfully moved for summary judgment based on the immunity afforded by Education Code section 44808 and they successfully defended Appellants' motion for a new trial. Education Code section 44808 provides immunity from liability as this was an off-campus injury, before the start of the school day, and no "enactment" establishes a duty to immediately and directly supervise the child under the facts of this case.

Appellants appealed the summary judgment motion, asserting that triable issues of material fact exist for a jury to decide as to whether the child should have been under the immediate and direct supervision of the District at the time of her injuries.

Status/Outcome:

The ELA filed an amicus brief on October 17, 2017, supporting the district's successful summary judgment decision by the lower court that held the District did not have a duty of care to the child as the child was not under the immediate and direct supervision of the District at the time of her injuries.



Collective Bargaining

Vallejo Police Officers Assoc. v. City of Vallejo (2017) Case No. A144987 – California Court of Appeal, First District

Member(s) Involved:

None

Summary:

On August 22, 2017, the First Appellate District issued a decision in the case upholding the City of Vallejo's decision to reduce its contributions toward future retiree health insurance premiums for their police officers. The opinion addressed the circumstances under which a labor agreement between a public agency and employee organization may confer a vested right to retiree medical benefits that extends beyond the term of the agreement. The parties' dispute centered on language in a 2009 memorandum of understanding (MOU) that the City would provide certain contributions for medical benefits for retirees in the same amount as for active employees. The Vallejo Police Officers Association (The Association) argued that based on the terms of the MOU, the retiree medical benefits should extend beyond the 2012 term at the same contribution rate. The City disagreed with this conclusion.

The court held that there is no vested right to retiree health benefits simply because the current collective bargaining agreement provides for retiree health benefits, absent "a clear basis in the contract or convincing extrinsic evidence." The court determined that the Association failed to overcome the presumption that an MOU does not create contract rights that survive the contract term. In so concluding, the court rejected arguments from the Association that extrinsic evidence in the case established an intent to create a vested right in the retiree benefits described in the 2009 MOU. The court further determined that the City's conduct during negotiations did not violate California collective bargaining laws as either impermissible surface bargaining or a premature declaration of impasse.

The court originally chose not to publish the decision. With the court recognizing the presumption against vesting in labor agreements that are for a fixed/limited time, the ELA believed school districts could benefit from this case being published.

Status/Outcome:

The ELA submitted a request to publish the decision, and on September 21, 2017, the court ordered the opinion published for good cause.



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