NO. 07-55892

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Louise Corales, Jamie Soltero, the Estate of Anthony J. Soltero, Jane Roe 1, a minor, by Her Guardian ad Litem, Mary Roe 1, Jane Roe 2, a minor, by Her Guardian ad Litem John Roe 1 and Guillermo Prieto,

Plaintiffs and Appellants,

v.

Gene Bennett, the Ontario-Montclair School District and Kathleen Kinley,

Defendants and Respondents.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
Honorable Stephen G. Larson
Case No. EDCV 06-00849

AMICUS CURIAE BRIEF OF THE EDUCATION LEGAL ALLIANCE OF THE CALIFORNIA SCHOOL BOARDS ASSOCIATION IN SUPPORT OF DEFENDANTS/RESPONDENTS

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation
CHRISTIAN M. KEINER, SBN 095144
DIANE MARSHALL-FREEMAN, SBN 115960
400 Capitol Mall, 27th Floor
Sacramento, California 95814
Telephone: (916) 321-4500
Facsimile: (916) 321-4555

Attorneys for Amicus Curiae
EDUCATION LEGAL ALLIANCE OF THE
CALIFORNIA SCHOOL BOARDS ASSOCIATION

CORPORATE DISCLOSURE STATEMENT

The undersigned counsel for the Education Legal Alliance of the California School Boards Association ("Amicus Curiae" or "CSBA") states that CSBA is a California nonprofit corporation, with no parent or subsidiary, and that no publicly held company owns 10 percent or more of CSBA's stock.

DATED: January 16, 2008.

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD

By Christian M. Keiner (SRC)
CHRISTIAN M. KEINER
Attorneys for Amicus Curiae EDUCATION LEGAL ALLIANCE OF THE CALIFORNIA SCHOOL BOARDS ASSOCIATION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Federal Cases

TABLE OF AUTHORITIES

Page

I. STATEMENT OF INTEREST.

The California School Boards Association's Education Legal Alliance ("CSBA" or "Amicus") represents a voluntary, nonprofit association of California public school district governing boards and county boards of education. Nearly all of the approximately 1000 school districts in California are members of CSBA and, as such, CSBA represents the interests of over 5000 locally elected school board members. Over 800 of these school districts are members of the Education Legal Alliance. The issues present in this matter of: (1) an alleged First Amendment "protected right" for students to leave school campuses without permission, and (2) qualified immunity for school board-employed administrators who take action in areas in which there exists no "clearly established right," are both areas of great concern to local school board members.

School board members are citizens, who come from many walks in life, both professional and non-professional, with the goal of helping to provide California's children with the best educational program possible. Thus, the members of CSBA have a strong interest in the appropriate resolution of this case and in protecting the governance of California's schools.

II. STATEMENT OF THE CASE.

CSBA adopts and incorporates the Statement of the Case as set forth by Defendants/Respondents Gene Bennett, the Ontario-Montclair School District, and Kathleen Kinley (hereinafter referred to as "School District") in their brief. *Appellees' Brief* at 2-5.

III. STANDARD OF REVIEW.

Amicus CSBA adopts and incorporates the Standard of Review set forth by the School District. *Appellees' Brief* at 7.

IV. SUMMARY OF ARGUMENT.

CSBA will first set forth for the benefit of this Court the constitutional and statutory framework underlying California's compulsory education system. CSBA will argue that this system properly safeguards, protects, and educates students. CSBA will further argue that given California's compelling State interest in implementing this compulsory attendance system, there can be no First Amendment "protected right" for students to leave a middle school campus without permission[1], even if the students thereafter attempt (unsuccessfully) to engage in an arguably protected First Amendment activity. Second, CSBA will argue that the qualified immunity doctrine, which precludes federal litigation in such novel circumstances, properly protects the ability of California school boards to employ qualified school administrators.

V. ARGUMENT.

A. THE CALIFORNIA CONSTITUTION AND STATUTORY FRAMEWORK FOR PUBLIC EDUCATION IS PREMISED UPON STUDENTS ATTENDING SCHOOL.

It is a common-sense axiom that students learn in the classroom while attending school. This basic and fundamental premise underlies California's entire constitutional and statutory scheme which compels compulsory school

[1] In non-legalese terms, the students herein "cut," "skipped," or "ditched" school.

attendance. California's policies behind compelling school age children to attend school are set forth in the California Constitution, and codified in the state's Education, Welfare and Institutions, and Penal Codes.

Article 9, Section 1 of the California Constitution makes the education of minors a primary state interest: "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement." Article 9, Section 5 of the California Constitution thereafter sets forth a statewide system of free, common schools. The California Constitution further provides that students are entitled to safe schools. Cal. Const., art. I, § 28(c).

To meet these twin goals of educating students in a safe environment, California has made education statutorily compulsory and imposed legal consequences for students, parents, or guardians who fail to comply with the compulsory education laws. As a matter of fundamental policy, school districts have a duty to supervise students in their charge and, in failing that duty, school districts may be held liable for injury even to off-campus truants, if negligently supervised while on campus. California Education Code section 48200 provides in pertinent part that "Each person between the ages of 6 and 18 years not exempted under the provisions of this chapter . . . is subject to compulsory full-time education." The California Supreme Court determined that a school district could be liable for injuries sustained by a student who left school without permission and was subsequently struck by a motorcycle. *Hoyem v. Manhattan Beach City Sch. Dist.*, 22 Cal.3d 508, 585 P.2d 851, 150 Cal.Rptr. 1 (1978). The state Supreme Court held that "if plaintiffs can prove that the pupil's injury was

proximately caused by the school district's negligent supervision, the district may be liable for the resultant damages." *Id.* at 512; *accord Perna v. Conejo Valley Unified Sch. Dist.*, 143 Cal.App.3d 292, 294-296, 192 Cal. Rptr. 10 (1983). Beyond properly educating students, because a school district may be liable for injuries sustained by truant students under the theory that the injuries were proximately caused by the district's negligent supervision on campus, school districts also strive to deter truancy.

The issue of truancy itself is addressed beginning with California Education Code section 48260. Specifically, section 48260(a) defines truancy and mandates that truants "shall be reported to the attendance supervisor or to the superintendent of the school district." California Education Code section 48260.5 requires school districts to notify parents of their student's truancy and the required notice must include information regarding the parental obligation to compel student attendance as well as, "That parents or guardians who fail to meet this obligation may be guilty of an infraction and subject to prosecution." Cal. Educ. Code § 48260.5(c).

Pursuant to California Education Code section 48263, habitual truants may be referred to a student attendance review board or probation department to resolve the truancy problem and unresolved cases may then be referred to the district attorney. State law further provides in Education Code section 48264 that: "The attendance supervisor or his or her designee, a peace officer, a school administrator or his or her designee, or a probation officer may arrest or assume temporary custody, during school hours, of any minor subject to compulsory full-time education. . ." Additionally, California Education Code section 48291 provides that:

> In the event that any such parent, guardian, or other person continually and willfully fails to respond to directives of the school attendance review board or services provided, the school attendance review board shall direct the school district to make and file in the proper court a criminal complaint against the parent . . .

Punishment for parents or guardians violating the California Education Code provisions governing truancy includes statutory fines up to $500 pursuant to California Education Code section 48293(a)(3).

The California Welfare and Institutions Code provides that minors with four or more truancies in a single school year, and minors who fail to respond to directives of a school attendance review board or probation officer, are "within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court." Cal. Welf. & Inst. Code § 601(b). Upon receipt of a truancy referral, the district attorney or probation officer may request a meeting with the parents or guardian of the truant to discuss possible legal consequences. Cal. Welf. & Inst. Code § 601.3(a). In addition to having jurisdiction over the juvenile, the juvenile court "may be assigned to sit as a superior court judge to hear any complaint alleging that a parent, guardian, or other person having control or charge of a minor" is subject to the penalties imposed by the California Education Code. Cal. Welf. & Inst. Code § 601.4(a).

California Penal Code section 272(a)(1) makes it a misdemeanor subject to punishment of up to one-year imprisonment in the county jail and $2,500 to cause or tend to cause a minor to violate the previously discussed sections of the California Welfare and Institutions Code. California's anti-truancy policy is thus so deeply rooted that the State Legislature has made it a criminal violation for an adult to cause or facilitate the truancy of a minor.

In addition to the classroom-based compulsory education laws, California school districts' funding model is based upon actual student attendance, termed "average daily attendance." The California Constitution provides in pertinent part, "The Legislature shall add to the State School Fund such other means from the revenues of the State as shall provide in said fund for apportionment in each fiscal year, an amount not less than one hundred eighty dollars ($180) per pupil in average daily attendance . . ." Cal. Const., art. IX, § 6. The constitutional allotment for school funding based upon the actual attendance of students is specifically addressed by California's Education Code. In calculating funding based upon the average daily attendance, one looks to "the number of days school was actually taught for not less than the minimum schooldays during the fiscal year less the sum of his or her absences." Cal. Educ. Code § 46010. Thus, beyond the educationally based public policy rationale for compelling a student's attendance, and the need to avoid liability, a student's truancy and unexcused absence means that a California school district loses funding under the average daily attendance calculation.

In summary, as set forth *supra*, the California constitutional and statutory scheme is entirely based upon students actually attending school, even to the extent of the attendance requirement underlying the funding model. School districts may be legally liable for negligent failure to supervise a student properly, and that liability may extend when the student is truant, if the school district negligently supervised the student while on campus.

B. THERE IS NO RECOGNIZED FIRST AMENDMENT PROTECTED RIGHT FOR A STUDENT TO LEAVE SCHOOL GROUNDS WITHOUT PERMISSION.

Students' First Amendment rights to free speech are protected to a more limited degree than adults in public schools. *Tinker v. Des Moines Independent Community Sch. Dist.*, 393 U.S. 503, 89 S.Ct. 733 (1969) ("*Tinker*"); *Burch v. Barker,* 861 F.2d 1149 (9th Cir. 1988). But as set forth *infra*, the pertinent case law regarding First Amendment protection assumes the students involved are (1) attending school, (2) engaged in a school-sponsored activity, or (3) engaged a school-sponsored off-campus activity. CSBA is aware of no case that extends First Amendment protection to the act of a student leaving school without the knowledge or permission of school administrators, teachers, or parents.

CSBA recognizes that the U.S. Supreme Court in *Tinker* held students are possessed of fundamental rights that the State must protect and that absent a specific showing of constitutionally valid reasons to regulate speech, students are entitled to freedom of expression of their views. *Tinker*, 393 U.S. at 511. However, the *Tinker* Court itself noted that case did not "concern speech or action that intrudes upon *the work of the schools* or the rights of other students." *Id.* at 508, emphasis added. *Tinker* did recognize the special nature of public schools gives rise to "the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to *prescribe and control conduct* in the schools." *Tinker*, 393 U.S. at 507, emphasis added.

The U.S. Supreme Court after *Tinker* ruled that a school district may impose sanctions for offensively lewd and indecent student speech during a school assembly. *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 106 S.Ct. 3159 (1986)

("*Bethel*"). In *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 270-71, 108 S.Ct. 562 (1988) ("*Hazelwood*"), the Court next differentiated between student political protest and student expression in school-sponsored activities. The Court held that educators do not violate the First Amendment when exercising control over style and content of student speech in faculty-supervised activities so long as the educator's actions are "reasonably related to legitimate pedagogical concerns." *Hazelwood*, 484 U.S. at 273. Speech sponsored by the school is thus subject to "greater control" by school authorities than speech not so sponsored. *Hazelwood*, 484 U.S. at 272-73.

In *Morse v. Frederick*, 127 S.Ct. 2618 (2007), the Court most recently considered whether a school official violated the First Amendment when she confiscated a banner bearing the phrase "Bong hits 4 Jesus" displayed by a student at a school-sponsored and school-supervised event, and later suspended the student who refused to take down the banner. The Court held that the school officials did not violate the First Amendment, stating in pertinent part that "schools may take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use, . . ." *Id.* at 2622. In *Morse*, the principal thought the banner would be interpreted by those viewing it, including other students, as promoting illegal drugs use. The Court concluded that the principal's interpretation was a reasonable one. *Id.* at 2624. Upon examining prior case law regarding student speech, the Court emphasized two basic principles: (1) "the constitutional rights of students in public schools are not automatically coextensive with the rights of adults in other settings," and (2) student speech does not necessarily have to "materially and substantially disrupt

the work and discipline of the school" before school officials may restrict the speech. *Id.* at 2626-27.

The most recent U.S. Supreme Court decision in *Morse* thus reiterates that: (1) student speech may be restricted where adult speech might not; and (2) in school situations, First Amendment arguably protected activity may be restricted *before* the speech/conduct materially and substantially disrupts the work and discipline of the school.

C. THE NINTH COURT DISTILLED THIS PRECEDENT INTO THREE CATEGORIES OF SPEECH THAT SCHOOL OFFICIALS MAY REGULATE.

The Ninth Circuit has distilled the U.S. Supreme Court precedent set forth *supra* in section V, subsection B into three categories of potentially regulated student speech[2]:

> In *Chandler*, we reviewed the Supreme Court's student speech cases and identified three categories of speech that school officials may constitutionally regulate, each of which is governed by different Supreme Court precedent:
>
> (1) vulgar, lewd, obscene and plainly offensive speech is governed by *Bethel School District v. Fraser*, 478 U.S. 675, 106 S.Ct. 3159, 92 L.Ed.2d 549 (1986);
>
> (2) school-sponsored speech is governed by *Hazelwood*; and
>
> (3) speech that falls into neither of these categories is governed by *Tinker*.

Pinard v. Clatskanie School Dist. 6J, 446 F.3d 964, 973 (9th Cir. 2006), citing *Chandler v. McMinnville Sch. Dist.*, 978 F.2d 524, 529 (9th Cir. 1992); *LaVine v. Blaine Sch. Dist.*, 257 F.3d 981, 988-989 (9th Cir. 2001).

---

[2] *Morse* does not appear to alter this three-category analysis.

Technically, the students' conduct here in seeking to join an off-campus political demonstration (which never actually occurred) falls into none of these three categories because it did not occur on school grounds (*Tinker*), or was not school sponsored. *Bethel*, *Hazelwood*. Nevertheless, assuming the conduct falls under the third *Tinker* "catch all" category, e.g., "speech that falls into neither of these categories is governed by *Tinker*," CSBA respectfully asserts the conduct is still unprotected.

Appellants Louise Corales; Jamie Soltero; the Estate of Anthony J. Soltero; Jane Roe 1, a minor, by Her Guardian ad Litem; Mary Roe 1; Jane Roe 2, a minor, by Her Guardian ad Litem John Roe 1; and Guillermo Prieto (hereinafter collectively referred as "Appellants" or "Students") fundamentally err by focusing upon the alleged protected speech/conduct (attempting to attend a demonstration that never occurred), without truly admitting the students involved "ditched" school in their attempt to engage in that conduct. *Appellants' Opening Brief, Statement of Facts* at 6-14.

Although not entirely on point or determinative, the *Pinard* and *LaVine* decisions by the Ninth Circuit do provide guidance. In *LaVine*, 257 F.3d 981, the Ninth Circuit reviewed the emergency expulsion of a student resulting from, in part, one of the student's own poems which school administrators perceived to be an implied threat of violent harm to himself or others. *Id.* at 983. In *LaVine* the Ninth Circuit reviewed the school district's decisions pursuant to the "third category" of *Tinker* speech as set forth above. *Id.* at 989. The Ninth Circuit looked to the "totality of facts" and "all the circumstances confronting the school officials that might reasonably portend disruption." *Id.* at 989. In doing so, the Ninth Circuit noted in conclusion that "We review, however, with deference,

schools' decisions in connection with the safety of their students even when freedom of expression is involved." *LaVine* at 992. The Ninth Circuit upheld the expulsion.

Next, in *Pinard*, 446 F.3d 964, the Ninth Circuit considered a school basketball team's petition and conduct in light of the third category of *Tinker* speech, again recognizing deference to school officials. *Id.* at 973-74, 976. The Ninth Circuit held that the students' petition and complaints in *Pinard* were First Amendment protected, but that the students' conduct when refusing to board the school bus and participate in an extracurricular athletic game "substantially disrupted and materially interfered with a school activity." *Id.* at 977.

This Ninth Circuit precedent taken together establish that: (1) school officials are entitled to deference when making decisions regarding the safety of students involved with the "third category" of *Tinker* speech, and (2) even if student speech is unquestionably First Amendment protected, school officials may nevertheless take action if the speech or conduct disrupts or potentially interferes with school activity.[3]

In this matter, the Students never really participated in clear First Amendment protected activity—the underlying facts establish that after "skipping" school they wandered from one other school site to another without a demonstration materializing. *Excerpts of Record* at 294, 423-25. Nevertheless, even assuming arguendo at some point the Students conduct was First

---

[3]In *Hudson v. Craven*, 403 F.3d 691 (9th Cir. 2005), pursuant to a *Pickering* analysis, the Ninth Circuit also held a community college district had a compelling state interest in the safety of underage students, which justified restricting an instructor-proposed field trip to World Trade Organization protest demonstrations.

Amendment protected, the basic principles set forth in *LaVine* or *Pinard* fully support the School District's actions herein.

As set forth above, actual school attendance by students is fundamental pursuant to the California constitutional and statutory scheme. Attendance in class, during the school day, is far more critical to the educational process than students participating in an extracurricular athletic contest as found unprotected in *Pinard*. Leaving school without permission per se interferes, or disrupts, school activity. *Pinard* at 977. Protecting students from harm while "skipping" school is just as fundamental as the facts regarding potential student harm held to support the school official's decisions affirmed in *LaVine*. Finally, since there is no school supervision when students "skip," the concern for the safety of underage students found persuasive by the Ninth Circuit in *Hudson* is even more compelling here, than students attending the Word Trade Organization protest as a field trip.

In summary, the Students' novel theory that leaving campus without permission must be treated the same as student political protest and protected pursuant to *Tinker*, would open the schoolhouse doors to students leaving school for any subjective reason, so long as he or she could claim an eventual First Amendment purpose. For all these reasons, CSBA respectfully asserts that the School District imposing the disciplinary consequences for being truant of a lecture and preclusion from attending an end-of-the-year trip to an amusement park, or dance, did not deny the Students herein any cognizable First Amendment protected right.

D. THE TRIAL COURT PROPERLY DISMISSED ALL DAMAGE CLAIMS AND GRANTED SUMMARY JUDGMENT IN FAVOR OF SCHOOL DISTRICT.

CSBA respectfully asserts the trial court properly ruled the school official(s) named as individuals have a qualified good faith sovereign immunity to any 42 U.S.C. section 1983 damage claim in this matter. The immunity of school administrators is paramount to CSBA because the "pool" of qualifying applicants is ever shrinking and it is becoming more difficult to recruit new administrators. It will only become all the more difficult to promote teachers into the ranks of school principals or vice principals, if educators know federal liability lurks for judgment calls made in accordance with existing law.

The first question is whether the plaintiff alleged facts, which, if true, would constitute a deprivation of a constitutional right at all. *County of Sacramento v. Lewis*, 523 U.S. 833, 841, 118 S.Ct. 1708, 1714, n.5 (1998) ("*County of Sacramento*"); *B.C. v. Plumas Unified Sch. Dist.*, 192 F.3d 1260, 1265, 1268 (9th Cir. 1999) (hereinafter "*B.C.*"). Second, unless there is a violation of a "clearly established" right which any reasonable person would have known at that time, a school official has qualified immunity and cannot be held accountable for damages. *Brewster v. Bd. of Educ.*, 149 F.3d 971, 976-977 (9th Cir. 1998) ("*Brewster*"); *B.C.*, 192 F.3d 1260; *Cole v. Oroville Union High Sch. Dist.*, 228 F.3d 1092 (2000).

1. THERE WAS NO "CLEARLY ESTABLISHED" RIGHT DURING THE TIME PERIOD AT ISSUE.

The second prong of the *County of Sacramento* test provides the clearest grounds for affirming the trial court. In this case, the pleadings and exhibits did not, and could not, have alleged an established constitutional right of which the

individually named defendants should have known at that time. The Ninth Circuit in *Brewster,* 149 F.3d 971, reiterated that broad constitutional rights in school cases must be particularized to the facts of implementation before being subjected to the "clearly established" test, and rejected plaintiff's claim that the "First Amendment" constituted a sufficiently established constitutional right as "precisely the broad based characterization that the Supreme Court has forbidden in the qualified immunity context." *Id.* at 977, 980; citations omitted. As stated in *Brewster*, "The legal right at issue is not the generic right to free speech." *Id.* at 980. In *B.C.,* 192 F.3d 1260, the Ninth Circuit reiterated the claimed constitutional deprivation must be apparent at the time of the alleged deprivation to be actionable. *Id.* at 1265, 1268. Analogous cases from other federal circuits make this point clear. *Baxter by Baxter v. Vigo County Sch. Corp.,* 26 F.3d 728, 737 (7th Cir. 1994) ["The plaintiff bears the burden of showing that the constitutional right allegedly violated was clearly established before the defendant acted or failed to act."]; *Maciariello v. Sumner*, 973 F.2d 295, 298 (4th Cir. 1992) ["Officials are not liable for bad guesses in gray areas. . . ."].

As set forth more fully *supra*, the School District's administrator's decisions were in compliance with California state law and in accord with the First Amendment's Free Speech Clause. There was no U.S. Supreme Court or Ninth Circuit case law setting forth student's right to "ditch" school for any purpose, even to attend a political protest. CSBA respectfully asserts that if this is a case of first impression involving students' arguable rights to leave campus without permission, there can be no official knowledge of a clearly established federal constitutional right sufficient to abrogate the Eleventh Amendment defense. *Brewster,* 149 F.3d 971; *B.C.*, 192 F.3d at 1268. The Ninth Circuit in

B.C., 192 F.3d at 1268, concluded the school officials believed their conduct was lawful. Just as in *B.C.*, this matter is certainly not a case where the unlawfulness was apparent in light of existing law. *B.C.*, 192 F.3d at 1268.

VI. CONCLUSION.

For all the above reasons, the Education Legal Alliance of the California School Boards Association respectfully asserts that this appellate court should affirm the judgment of the trial court to (1) ensure the safety and well-being of California students during the school day by not extending First Amendment doctrine so far that leaving school without permission is protected by the Free Speech Clause, (2) in the alternative, recognize that the qualified good faith immunity doctrine compels dismissal when the alleged right, as here, is not "clearly established."

Respectfully submitted,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation

Dated: January 16, 2008.

By: Diane Marshall-Freeman for
CHRISTIAN M. KEINER
Attorneys for Amicus Curiae EDUCATION LEGAL ALLIANCE OF THE CALIFORNIA SCHOOL BOARDS ASSOCIATION

CERTIFICATE OF COMPLIANCE

I do hereby certify, pursuant to Circuit Rule 32 of the Ninth Circuit Court of Appeals, that the Amicus Curiae Brief of EDUCATION LEGAL ALLIANCE OF THE CALIFORNIA SCHOOL BOARDS ASSOCIATION in Support of Defendants/Respondents is in conformity with the paper size, margins, and line spacing requirements of Rule 32(c), is proportionally spaced in 14 points Times New Roman font, and based upon the count of the word processing system used to prepare the brief, the total word count is 3,825 and the word count does not exceed 14,000 words nor does the brief average more than 280 words per page, including footnotes and quotations.

Dated: January 16, 2008.

Diane Marshall-Freeman

DIANE MARSHALL-FREEMAN

STATEMENT OF RELATED CASES

[CIRCUIT RULE 28-2.6] The EDUCATION LEGAL ALLIANCE OF THE CALIFORNIA SCHOOL BOARDS ASSOCIATION is unaware of related cases pending in this Court.

Respectfully submitted,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD

Dated: January 16, 2008.

By: Diane Marshall-Freeman for
CHRISTIAN M. KEINER
Attorneys for Amicus Curiae
EDUCATION LEGAL ALLIANCE OF THE CALIFORNIA SCHOOL BOARDS ASSOCIATION

PROOF OF SERVICE

I, Sherri Lee Caplette, declare:

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On January 16, 2008, I served two copies each of the within document(s):

AMICUS CURIAE BRIEF OF THE EDUCATION LEGAL ALLIANCE OF THE CALIFORNIA SCHOOL BOARDS ASSOCIATION IN SUPPORT OF DEFENDANTS/RESPONDENTS

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California addressed as set forth below:

R. Samuel Paz
Attorney at Law
Law Offices of R. Samuel Paz
5701 West Slauson Avenue, #202
Culver City, CA 90230-6593 — Counsel for Plaintiffs/Appellants

Sonia M. Mercado
Attorney at Law
Sonia Mercado & Associates
5701 West Slauson Avenue, #202
Culver City, CA 90230-6593 — Counsel for Plaintiffs/Appellants

Jacqueline DeWarr Berryessa
Attorney at Law
Chidester & Associates
17762 Cowan
Irvine, CA 92614 — Counsel for Defendants/Respondents

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 16, 2008, at Sacramento, California.

Sherri Lee Caplette, CCLS