Spring/Summer 2009

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

# Alliance REPORT

IMPORTANT ISSUES



NEW ALLIANCE CASES



RULINGS/SETTLEMENTS IN ACTIVE ALLIANCE CASES



OTHER ACTIVE CASES



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

## We fight better when we stand together

*The Education Legal Alliance of the California School Boards Association initiates and supports litigation on behalf of public schools. This consortium of school districts, county offices of education (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 ISSUES

The following section provides an overview of important issues that the Alliance has been working on, such as a legal issue before a state agency, an issue in the trial court the Alliance is tracking, or an issue on which the Alliance is initiating legal action:

### Proposition 98 Maintenance Factor

*Melinda Dart, CFT, SEIU Local 99, et al. v. Schwarzenegger, et al. | San Francisco County Superior Court*

**Issue:**

Under the current year (2008-09) and next year's budget (2009-10) scenarios, is the state's reduction of school funding permanent or is the state required to create a "maintenance factor" to restore funding in the future, as provided for in Proposition 98?

**Background:**

On February 20, 2009, the governor signed a revised 2008-09 state budget cutting $7.4 billion from the amount originally budgeted and state officials announced that these cuts would become permanent unless Proposition 1B was approved by the voters in the May 2009 Special Election. The measure failed. Severe cuts to education funding were also made in the 2009-10 state budget and billions more in reductions are proposed. The

governor has asserted that these cuts are permanent; however CSBA, and other parties, disagree and assert that the state is obligated to restore the cuts to K-14 education funding as soon as the state is financially able to do so under the "maintenance factor" provisions of Proposition 98.

Proposition 98 was adopted by the voters in 1988 to stabilize education funding and prevent permanent reductions. It placed two funding formulas in the California Constitution that require the state to fund education at the higher level of the two tests. Proposition 98 was designed so that when revenues rise, schools will receive a guaranteed percentage of those revenues (Test 1, currently set at 40.1%), but when revenues are flat or falling, as they are currently, schools will be guaranteed at least what they received the previous year, adjusted for changes in student population and inflation (Test 2).

Proposition 111, passed after Proposition 98, retained the requirement that the higher of the two tests would determine the minimum funding requirement, but it provided an alternative test for calculating the inflation factor to be used for the actual appropriation if falling revenues made a full appropriation under Test 2 unduly burdensome. This formula has been called Test 3, but in reality Test 3 is an alternative formulation of Test 2. Test 3 is only operative in specific years when the economic circumstances dictate. Proposition 111 also required that in years in which the state used Test 3 to temporarily reduce its obligation, it would have to restore funding to the level that would have been required by Test 2 (called the "maintenance factor").

### Alliance Activities:

On June 4, 2009, CSBA and the Alliance joined in litigation filed by the California Federation of Teachers and SEIU Local 99 to ensure that an estimated $10 billion is restored to K-14 public education funding under the "maintenance factor" for 2008-09 and that, in future years, including 2009-10, restoration occurs whenever falling revenues lead to significant reductions in education funding.

### Why this issue is important:

Unfortunately we have to force the state to follow the law (Propositions 98 and 111) and enforce the intent of the voters that California invest in its children consistent with the law.

## Algebra I Mandate

*CSBA/ELA, ACSA v. State Board of Education | California Court of Appeal*

### Issue:

Did the State Board of Education's July 9 action to designate Algebra I as the Grade 8 assessment violate the Bagley-Keene Open Meeting Act and exceed the SBE's authority?

### Background:

In the fall of 2007, the U.S. Department of Education found California's assessment system to be out of compliance with the NCLB because two assessments are available for grade 8 level students: 1) Algebra I for students enrolled in Algebra I; and 2) Grade 8 General Math Assessment for students not enrolled in Algebra I. Because the General Math Assessment was based entirely on grade 6 and 7 academic content standards it was determined by USDOE not to be at "grade level," as required by NCLB. At its July meeting, the SBE voted to direct the California Department of Education to enter into a Compliance Agreement

with USDOE to transition into implementing the Algebra I assessment for all 8th graders over a three-year period.

### Alliance Activities:

CSBA and ACSA filed litigation in early September to invalidate the SBE's July action on the grounds that the action exceed the SBE's authority and violated the state's open meeting act. Superintendent of Public Instruction Jack O'Connell and the California Teachers Association joined in the litigation.

In a major victory, the Sacramento County Superior Court on December 19 granted the Alliance's request for a preliminary injunction by ruling that CSBA was likely to prevail at trial on both claims. The judge's order prevents the SBE from implementing its July 9 action, including finalizing a timeline waiver or compliance agreement with the USDOE, until after a trial is held or a settlement is reached. At its January 8, 2009 meeting, the SBE authorized appeal of that portion of the court's decision which found that the SBE lacked authority to revise the 8th grade math content standard. However, because the SBE did not file for an expedited review, the appeal is likely to take at least a year before being resolved by the court. It is anticipated that there will be an opportunity for negotiations with the new administration at USDOE.

### Why this issue is important:

The SBE's decision is a significant change in statewide policy and results in a new mandate on districts without any funds allocated to support the new mandate. While CSBA believes that it may be worthwhile to discuss at the statewide level when students should take Algebra I, CSBA disagrees with the process used by the SBE to make the decision and the fact that the decision was made without any discussion as to the resources necessary to implement the new mandate. Nor was there any discussion as to other implementation issues, such as changes to laws regarding teacher preparation, instructional materials, and professional development.

## Proposition 39 Charter School Facilities Regulations

*CSBA/ELA et al. v. State Board of Education | California Court of Appeal*

### Issue:

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

### Background:

In 2007, the CDE proposed revisions to the existing SBE regulations to incorporate four court decisions subsequent to the passage of Proposition 39 (2000) and to reconsider proposed regulations that would create a dispute resolution procedure. The regulations were ultimately adopted by the SBE and the Alliance then filed litigation challenging several provisions.

### Alliance Activities:

Last November, the judge issued a ruling that invalidated several significant provisions of the new regulations, but rejected other issues raised by CSBA. In an important victory, the court rejected provisions related to conversion charter schools but upheld problematic regulations related to furnishings and equipment and grade level comparisons. As a result,

those sections of the regulations that were upheld by the court are effective for facility requests made by charter schools beginning in 2008-09.

The California Charter Schools Association filed an appeal of the trial court's ruling regarding conversion charters. As a result, the Alliance countered with an appeal as to the portion of the trial court's ruling adverse to district interests. The SBE did not join in the CCSA's appeal.

### Why this issue is important:

Many of the revisions are detrimental to school districts. For example, the statutory requirement to furnish and equip facilities "for the charter school's average daily classroom attendance by in-district students" is expanded to include providing front office equipment and additional, though undefined, support furnishings and equipment ("student services that directly support classroom instruction").

## Mandated Cost Lawsuit

*CSBA/ELA, et al. v. State of California, Commission on State Mandates | California Court of Appeal*

### Issue:

Is a statute constitutional that prohibits mandate reimbursement to a local agency for the costs of performing duties "necessary to implement" or "reasonably within the scope of" a mandate expressly specified in a ballot measure approved by the voters?

### Background:

The basis of the lawsuit is the approval of AB 138 (Chapter 72, Statutes of 2005) by the Legislature, a statute enacted as part of the state's concentrated strategy to terminate its constitutional obligation to reimburse local governments for costs associated with providing mandated services. AB 138 expanded an existing statute exempting the state from having to reimburse school districts for costs of mandates expressly specified in a voter-approved ballot measure to include costs of mandates "necessary to implement" or "reasonably within scope of" an expressly specified voter-approved mandate.

For many years, the Commission on State Mandates had determined that three state-mandated programs were reimbursable mandates: the School Accountability Report Card, the Mandate Reimbursement Process, and certain Brown Act requirements. AB 138 "compelled" the COSM to change its prior determinations by requiring the COSM to either vacate or reconsider its decisions because the mandates were either "necessary to implement" or "reasonably within the scope of" an expressly specified voter-approved mandate. The SARC, MRP, and Brown Act were previously approved reimbursable mandates and, although not expressly included in a voter-approved ballot measure, have "roots" in voter-approved ballot measures.

### Alliance Activities:

In another victory for the Alliance, the appellate court ruled that the Legislature lacks the authority under the constitutional separation of powers doctrine to direct the COSM to overturn or reconsider its final decisions. The appellate court held that the quasi-judicial decisions of the COSM are not subject "to the whim of the Legislature." This means the legislation requiring the COSM to overturn its prior decisions was unconstitutional and, as a result, the SARC, MRP and pertinent Brown Act open meeting mandate claims are reinstated. The ruling affects reimbursements owed back to 2005 when the COSM had acted

to comply with the Legislature's direction. Neither the state nor COSM requested review by the California Supreme Court and thus the appellate court's ruling is final.

### Why this case is important:

The Legislature does not have the authority "to write its own ticket" to avoid paying for the mandates it imposes. AB 138, determined unconstitutional by the trial court, was part of that effort to avoid payment.

## Mandate Deferral Lawsuit

*CSBA/ELA, et al. v. State of California, et al. | San Diego County Superior Court*

### 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 California Constitution requires that whenever the state mandates a new program or higher level of service on any local government (including school districts), it must reimburse the local government for the costs incurred unless funding for the mandate 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 is 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.

The 2006-07 state budget appropriated $900 million to fund payment of the accumulated debt and added some funding for 2006-07 mandates. However, this appropriation failed to pay off the past debt and was inadequate to cover the state's 2006-07 obligation. Although the cost of the K-12 mandates for 2007-08 is estimated at $160 million, the 2007-08 state budget appropriates only $38,000, or $1,000 per mandate. The carry-over "credit card debt" from prior years is approximately $415 million.

### Alliance Activities:

In another major victory for the Alliance, a trial court ruled in December that the California Constitution requires the state to budget full reimbursement of local governments for the cost of state-imposed mandates. Although the judge's ruling prohibits this deferral practice, the 2009-10 budget approved by the governor and the Legislature ignores the court's order and continues the practice of budgeting only $1,000 per mandate and deferring payment of the balance. The state is expected to 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, and then to delete the funding or suspend the mandates, gives districts the ability to avoid having to perform the mandated programs or services that the state is not paying for.

## 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, thus thwarting districts from receiving reimbursement for state-mandated costs?

### Background:

Since 2002, the SCO has audited reimbursable mandate claims filed by local educational agencies. A number of problems have arisen with the auditing procedures relied upon by the SCO, which have resulted in a total denial or substantial reduction of many claims. Most typically, the problem is a result of the SCO's demand for contemporaneous supporting data for staff time. The lawsuit filed against the SCO, led by Clovis USD, is focused on SCO procedures in the following mandated programs: collective bargaining, school district of choice, intra-district attendance, notification of truancy, emergency procedures, earthquake procedures and disaster program, and graduation requirements.

### Alliance Activities:

The Alliance provided financial assistance to districts who filed suit in the trial court against the SCO. Initially the trial court held that the SCO's requirement of contemporaneous documents of employees' salaries is reasonable and otherwise allowable, except when applied to the Collective Bargaining and Intradistrict Attendance Programs, where the requirement constitutes an impermissible underground regulation because it is not part of the applicable parameters and guidelines for filing claims. Thus, a substantial, but only partial, victory was gained for school districts.

In a clarification of its ruling, the trial court held that in other challenged audits pending before the COSM on claims that included the contemporaneous documents requirement (School District of Choice, Emergency Procedures, Earthquake Procedures and Disasters, and Notification of Truancy), the aggrieved districts may refer to the court's ruling barring the contemporaneous documentation requirement. Although the court refused to set aside the audits, there is a potential that another $6.4 million in audit penalties could ultimately be voided.

The SCO has appealed the court's ruling that SCO reliance on the contemporaneous document requirement is barred unless included as part of applicable parameters and guidelines. The districts have cross-appealed on denial of relief in those audits where the challenge pertains to audits before the contemporaneous documentation requirement was allowed.

### Why this case is important:

The new documentation requirements are not consistent with applicable government accounting standards and are part of the state's continuing strategy to reduce the state's liability for mandated costs.

## 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 LEAs 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. In 1994, a test claim was filed with the COSM claiming the behavioral intervention plan requirements imposed a reimbursable state-mandated program upon LEAs. In 2000, the COSM 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. Negotiations resumed in late 2007.

**Alliance Activities:**

In yet another major victory, the Alliance negotiated a settlement in this dispute, which has been ongoing for over 14 years. Pursuant to the settlement starting in 2009-10 LEAs will see increased AB 602 funding (the special education funding mechanism) in the amount of $65 million. In settlement of the BIP costs going back to 1993-94, school districts will receive $510 million payable in $85 million annual installment over six years commencing in 2011-12. LEAs overwhelmingly supported the settlement. Unfortunately payment of the $510 million will have to be delayed due to the difficult financial circumstances facing the state but hope remains increased AB 602 funding will occur. Most importantly the state continues to support the substance of the settlement stymied only by the inability to implement it on the agreed upon timeline.

**Why this issue is important:**

The state requirements for BIPs are detailed and costly, and it is important to LEAs that this mandate be reimbursed.

# NEW ALLIANCE CASES

The following section discusses cases in which the CSBA Executive Committee or the ELA Steering Committee has approved involvement of the Alliance.

## Liability for Cost Overruns in Facility Contracts

*Los Angeles USD v. Great American Insurance Co. et al. | California Supreme Court*

**Issue:**

Must a school district pay a contractor for cost overruns beyond an agreed-upon contract price when there is no evidence the district had any intent to defraud?

**Alliance Activities:**

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

**Background:**

Dissatisfied with the first contractor's performance, LAUSD entered into a completion contract with Hayward Construction to complete an elementary school and to correct some of the first contractor's defective work. The contract guaranteed a maximum contract price of $4.5 million, an inexact amount due to the absence of precise knowledge of the remaining work that needed to be done. Upon reaching the $4.5 million maximum, Hayward asserted

that latent defects existed which were outside the scope of the project and it would not complete the school unless LAUSD paid millions of dollars more than the agreed-upon maximum contract price. LAUSD advanced additional funds (approximately $1.5 million) and Hayward completed the project. In March 2001, LAUSD filed its complaint for breach of the completion contract and Hayward counter-sued alleging that the district breached an "implied warranty of correctness" because the district failed to disclose material facts relevant to the contract. The trial court ruled in favor of LAUSD.

In reversing the trial court, the appellate court's ruling adopted a new standard of public entity liability by holding that a breach of an implied warranty of correctness exists even when there is no evidence of intentional nondisclosure or affirmative misrepresentation – evidence that did not exist in this case. The California Supreme Court accepted review.

**Why this case is important:**

Due to continued enrollment growth and the need to replace inadequate and aging schools, California school districts will face the need to construct numerous schools and modernize existing schools over the next few years. The Court of Appeal's decision creates a great expansion of liability for public entities since entities can be found liable even when there is no wrong-doing. This ruling increases the legal exposure for construction costs and ultimately adds to the construction costs of a project.

# RULINGS/SETTLEMENTS IN ACTIVE ALLIANCE CASES

Since the last issue of the Alliance Report, there has been a court ruling in the following case in which the Alliance has filed a lawsuit or an amicus brief:

## Certificated Layoff "Skipping"

*Hildebrandt v. St. Helena USD | California Court of Appeal*

**Issue:**

In a certificated lay-off, may a district "skip" a junior full-time employee and lay off two more senior part-time employees qualified to perform the particular kind of service being reduced?

**Alliance Activities:**

The Alliance filed an amicus brief in support of the district focused on the board's right to classify positions based on the educational program needs of the district.

**Case Status:**

The question in this case was whether a part-time employee, with greater seniority who is faced with layoff, was entitled to "bump" a full-time employee with less seniority in order to avoid layoff.

The district initiated layoff proceedings to reduce one full-time school psychologist position. At the time, the district employed one full-time psychologist and two part-time, at 80 percent and 20 percent of full-time equivalent employment. The district retained the full-time employee, even though the two part-timers had higher seniority dates. The two part-timers then sued for

the right to bump the full-timer, which would in effect require the district to split the full-time position into two part-time positions. The trial court rejected their claim and they appealed.

In the appeal, the district and the Alliance argued that the board should not be required to split a full-time position into two separate part-time positions in order to accommodate the more senior employee's desire for a part-time position. The appellate court expressly accepted the Alliance's argument. Previously, courts have held that part-time employees do not have rights to a full-time position on rehire after a layoff. This case now establishes the same rule for the initial layoff.

## Application of Wage and Hour Laws to School Districts

*Johnson, et al. v. Arvin-Edison Water Storage District et al. | California Court of Appeal*

### Issue:

Do California's wage and hours laws found in the Labor Code and California's Industrial Welfare Commission Wage Orders apply to public agencies such as school districts?

### Alliance Activities:

The Alliance filed an amicus brief in support of the water district, which for these purposes is a public entity like a school district.

### Case Status:

This case was brought by an employee of the water district, who filed a class action lawsuit alleging that private sector overtime and meal period requirements found in California's wage and hour laws apply to the water district, a public entity. The trial court ruled in favor of the water district and held that provisions of the Labor Code only apply to employees in the private sector unless the law is specifically made applicable to public employees. The employee filed an appeal.

The appellate court upheld the trial court's decision that the provisions of the Labor Code are only applicable to public employers when the law expressly so states. When the law is silent as to public entities, then, according to the court, the presumption is that public entities are exempt. This is a positive result for school districts since an adverse ruling could have resulted in lawsuits and claims against school districts statewide by employees seeking back pay and other remedies.

## Right of Student to Attend a Protest During the School Day

*Corales et al. v Bennett, Kinley, et al. (Ontario-Montclair School District) | U.S. 9th Circuit Court of Appeal*

### Issue:

Is a middle school student's act of leaving school without permission or supervision of parents or school authorities to attend a protest during the school day expressive conduct protected by First Amendment free speech rights?

### Alliance Activities:

The Alliance filed an amicus brief in support of the district focused on the district's right to discipline a student for truancy, even when weighed against a student's First Amendment rights.

### Case Status:

This case was a sad situation in which a middle school student cut school, without permission from school authorities or his parents, in order to attend an immigration protest. The student was later disciplined by the assistant principal and was punished by being prohibited from attending an end-of-the-year school trip to an amusement park. The student told his mother that he had been in trouble and later committed suicide. The parents sued claiming that the student was disciplined for exercising his First Amendment rights to protest immigrant rights while the district claimed that discipline was imposed solely because the student was truant.

The 9th Circuit Court of Appeals agreed with the district and Alliance's position that the student was disciplined for the disruption caused by the act of leaving campus without permission, not for the disruption caused by leaving campus to protest immigration rights, which would be protected by the constitution. The district's discipline was content-neutral and the district had an interest in keeping students safe by forbidding them from leaving school and this interest was unrelated to the content of the student's speech. The district's action was permissible, even if it interfered with the student's ability to express himself, including warning him (however sternly) regarding his legal obligation to stay in school during school hours.

## Dismissal of Employee Resulting from "No Contest" Plea

*Cahoon v. Governing Board of Ventura Unified School District | California Court of Appeal*

### Issue:

Can a district dismiss a classified employee for his plea of no contest to a drug offense specified in the Education Code as a mandatory leave offense?

### Alliance Activities:

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

### Case Status:

This case involved a classified employee who pled "no contest" to a misdemeanor drug offense for forging, altering, and/or issuing a prescription for a narcotic drug. He was subsequently terminated by the district and appealed his termination before the Personnel Commission. The Personnel Commission upheld the district's termination on the grounds that it was legally obligated to terminate his employment because of his plea to a specified drug offense.

Although the Education Code specifies that no person shall be retained in employment by a district who has been convicted of any sex offense and that a conviction following a plea of "no contest" shall be deemed to be a conviction, the same language is not used for drug offenses. The district argued that another section of the law should also be considered, which states that a plea of no contest shall also be deemed to be a conviction.

However, both the trial court and appellate court disagreed with the district and the Alliance's argument and held that the Legislature intended for drug offenses and sex offenses to be treated differently and that such a change would need to be made by the Legislature.

## Attorneys' Fees in Settlement of a Special Education Lawsuit

*M.D. and S.D v. OAH and Saddleback Valley USD | U.S. 9th Circuit Court of Appeal*

### Issue:

Are attorneys' fees available to a parent who accepts a school district's written offer of settlement 10 days prior to the start of a due process hearing under the Individuals with Disabilities Education Act?

### Alliance Activities:

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

### Case Status:

A due process hearing was scheduled regarding the Plaintiff's claim for reimbursement of their child's private pre-school placement and other costs for expenses incurred for assessment. Prior to the hearing, the district made the requisite 10-day written offer of settlement which would "fully and finally resolve" Plaintiff's due process complaint. Plaintiffs "unconditionally" accepted the offer in writing on the next day. Plaintiffs allege that the district's subsequently proposed written settlement agreement contained conditions not set forth in the district's offer, including a release of attorney's fees. Plaintiff's then demanded an additional $65,000 in attorneys' fees, above the settlement amount, which the district refused to pay.

The question in the case was whether parents could recover attorneys' fees after accepting a 10-day offer of settlement. The 9th Circuit ruled in favor of the district, but did not issue a ruling detailing its reasoning. However, the positive ruling by the court provides districts with "powerful precedent and security" to gain settlements and ensure against parties demanding further attorneys' fees after settlement had been reached.

# OTHER ACTIVE CASES

A court decision is pending in the following cases in which the Alliance has filed an amicus brief:

## Baseline for Assessing Environmental Impacts

*Communities for a Better Environment v. South Coast Air Quality Management District, (SCAQMD) | California Supreme Court*

### Issue:

What is the "baseline" for assessing the impacts of modifications to existing facilities for purposes of environmental review under the California Environmental Quality Act?

## Teacher Failure to Obtain Required English Learner Certification

*Ripon USD v. Comm. on Professional Competence, Theresa Messick, RPI | California Court of Appeal*

### Issue:

May a school district terminate a Life Single Subject Teaching Credential (music) teacher who refuses to obtain EL certification as required in the collective bargaining agreement?

## Use of District Mailboxes for Campaign Purposes

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

### Issue:

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

## CEQA Statute of Limitations

*Committee for Green Foothills v. County of Santa Clara et al., Leland Stanford Junior University, et al. Real Parties in Interest | California Supreme Court*

### Issue:

Does an agency's properly filed and posted notice of determination trigger the 30-day statute of limitations for California Environmental Quality Act challenges, or may a court disregard the NOD and apply a longer limitations period if the plaintiff might be able to allege that the agency did not comply with CEQA when it approved the project?

## Education Legal Alliance

### 2009 Steering Committee

## Non-Voting Members

**Brett McFadden**
*ACSA Liaison, Management Services Executive*

**Mike Smith**
*Shareholder, Lozano Smith*

## 2009 Attorney Advisory Committee

**Mike Smith, Chair**
*Lozano Smith*

**Ronald Wenkart, Vice-Chair**
*Orange County Office of Education*

**Spencer Covert**
*Parker & Covert*

**Sue Ann Salmon Evans**
*Miller, Brown & Dannis*

**Diana Halpenny**
*Kronick, Moskovitz, Tiedemann & Girard*

**Paul Loya**
*Atkinson, Andelson, Loya, Ruud & Romo*

** 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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