



education legal alliance



annual report **2015**





Dear Members:

As you know, the state and federal courts are an important battleground for influencing education policy, and shaping the ways in which school districts and county offices of education in California educate 6.2 million students.

In 1992, the California School Boards Association (CSBA) established the Education Legal Alliance (ELA) to pursue and defend the interests of school districts and county offices of education before the courts and state agencies. Over the last twenty-three years, the ELA has served as the statewide legal “voice” for local districts, securing billions of dollars in mandate payments owed to schools, protecting districts from unwarranted challenges by charter school organizations, holding the state accountable for unconstitutional school funding manipulations, and much, much more.

The ELA’s track record is unmatched, and is a model for effective legal advocacy. A few of the ELA’s recent activities on behalf of public education in California include:

- Challenging the State’s unconstitutional manipulation of Proposition 98 in the 2015-16 Budget Act.
- Advocating for greater district discretion in locating charter school facilities by filing in-depth amicus briefs and letters on behalf of school districts and county offices of education across the state.
- Suing the State along with nine school districts to provide adequate resources to schools and to ensure all students have an equal opportunity to meet the academic standards established by the State.
- Supporting a recent challenge to statutes governing teacher tenure, dismissal and layoff, asserting that students of lower income status are disproportionality impacted as a result of these state statutes.
- Publishing legal guidances on important topics such as the implementation of AB 1266, which required programs and facilities to be available to each student in a manner consistent with his or her gender identity.

The ELA is recognized and respected by state and national policy makers and organizations as the leading education legal advocate for school districts and county offices of education.

Become a member of the ELA today, and join your fellow governing boards in maintaining a powerful and influential legal voice for students and local education agencies. When you join the ELA, your district or county office of education will have access to the best legal minds in California, and will become a part of one of the most dynamic and successful legal entities fighting on behalf public education anywhere in the nation.

To become a member, or to get additional information on the benefits of joining the ELA, please call us at (800) 266-3382 or contact us via email at legal@csba.org.

Sincerely,

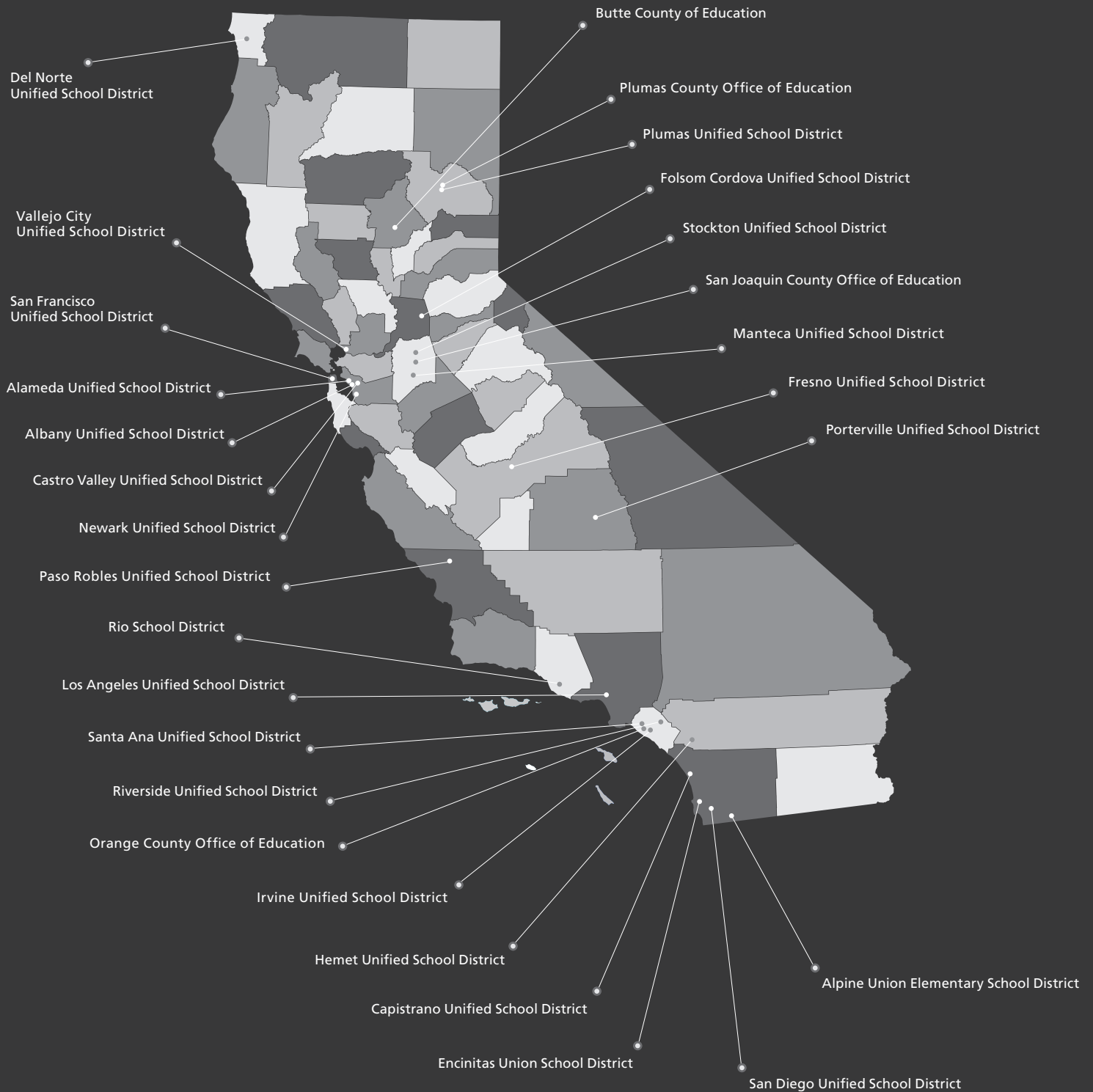
Vernon M. Billy
CEO & Executive Director,
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Keith Bray
Director, ELA and General Counsel,
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Members with whom the ELA worked in 2015





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 has 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 support of 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.

"The Education Legal Alliance remains committed to working with and on behalf of students, school districts, and county offices of education to ensure they all have an effective voice on critical education issues in the courts, as well as the legal information they need to do their jobs well. In addition, The Education Legal Alliance has made a top priority to continue addressing the issue of Adequate funding for Education in California."

— Jesus Holguín, CSBA President



education legal alliance steering committee



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*CSBA President
Moreno Valley USD*



Richard A. Carranza

*Superintendent
San Francisco County & USD*



Chris Ungar, Vice Chair

*CSBA President-elect
San Luis Coastal USD*



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*County Superintendent
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Vernon M. Billy

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*Superintendent
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*CSBA Delegate, Region 24
Whittier Union HSD*



Rosalina Rivera

*Superintendent
Delano Union SD*



Peter Birdsall

CCSESA Executive Director



Paige Stauss

*Director, Region 4
Roseville Joint Union HSD*



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Lozano Smith



Diana Halpenny
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current activities





Adequacy Committee

In 2015, CSBA's Education Legal Alliance convened a committee to focus on the issue of funding adequacy in K-12 public education. Chaired by CSBA President Jesús Holguín, the purpose of the "Adequacy Committee" is to:

- Assist CSBA's legal team in the *Robles-Wong v. California* lawsuit
- Push for more funding for education
- Add value to the conversation about adequate funding in California in light of the Local Control Funding Formula

The Committee brings together CSBA directors and delegates, superintendents and other district administrators, and experts in the areas of curriculum, instruction, and school finance.

The Adequacy Committee first met on March 18, 2015. At the meeting, Rob Manwaring of Robert Manwaring Consulting gave a presentation on school funding adequacy metrics and how California compares with other states. Additionally, the Committee held breakout sessions focused on (1) how the current lack of adequate funding has impacted students and (2) how an adequate level of funding would impact students. The Committee also spent time discussing the definition of adequacy, the *Robles-Wong v. California* lawsuit as well as school finance lawsuits in other states, the latest legislative activity related to school funding adequacy, and the need for greater teacher recruitment and retention.

"ELA continues to advocate for California students and school districts, working on their behalf for adequate funding, local control and accountability."

— *Chris Ungar, CSBA President-elect*

The Adequacy Committee met again on July 8, 2015. At the meeting, a panel discussion was held on the question of what constituted a 21st century education. The panelists were: Nancy Andrzejczak (President, California Art Education Association), Patrick Henning Jr. (Director, Employment Development Department), Michal Kurlaender (Director, UC Davis Educational Evaluation Center), and Kim Patillo Brownson (Director, Advancement Project). Additionally, the Committee separately discussed what the indicators of student success would look like if public education in California were adequately funded. The

Committee also heard a report on the Delegate Assembly breakout sessions focused on funding adequacy as well as a report on the various proposals to increase education funding statewide and on options for increasing local revenue authority from California Forward.

The Committee met again on October 22, 2015 to review and discuss a draft report.

The final report, which includes an updated estimate of the adequacy funding gap, will be presented to the Delegate Assembly in December 2015 at CSBA's Annual Education Conference.



School Finance System

Robles-Wong v. State of California (2011) Case No. A134423 - California Court of Appeal, First District

Member(s) Involved:

Alameda Unified School District; Alpine Union Elementary School District (San Diego); Del Norte Unified School District; Folsom Cordova Unified School District; Hemet Unified School District; Porterville Unified School District; Riverside Unified School District; San Francisco Unified School District; Santa Ana Unified School District

Summary:

Education is a fundamental right under the California Constitution. The State has chosen to implement this right by adopting a standards-based education program that requires what all schools must teach and what all students are expected to learn. In May 2010, the ELA filed a lawsuit against the State of California requesting that the school finance system be declared unconstitutional and that the State be required to establish a school finance system that provides all students an equal opportunity to meet the academic goals set by the State. The ELA was joined in its lawsuit by a broad coalition of students and their parents, nine districts (see above), the Association of California School Administrators, and the California State PTA. Soon after the ELA filed its complaint, CTA also intervened as a plaintiff.

In response, the State “demurred,” which is a legal maneuver in which the defendant challenges the legal sufficiency of a complaint. The State’s main arguments in its demurrer were that the courts cannot enforce the constitutional right to an education and that the separation of powers doctrine places the power to determine the sufficiency of the school finance system solely with the Legislature. The ELA and the other plaintiffs anticipated these arguments and filed a response. Unfortunately, the Alameda County Superior Court agreed with the State.

“The ELA serves as the safety net that brings the weight of hundreds of local educational agencies together to support local issues. One example is the case of Robles-Wong where nine school districts banded together with the ELA to protect California’s students’ fundamental right to an education. Thanks to the expertise, experience, and resources of the ELA, we are able to pursue this case to help defend our schools and students.”

— Jill Wynns, Member, San Francisco Unified School District Board and CSBA Past President

On appeal, the ELA and the district plaintiffs elected to join with a related case known as *Campaign for Quality Education v. California*, which was filed by Public Advocates, Inc. and others after *Robles-Wong* was filed.

Status/Outcome:

The joint appeal has been fully briefed, and we are awaiting oral argument.



Proposition 98 Rebenching

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

Member(s) Involved:

None

Summary:

Proposition 98 was approved by voters in 1988 to ensure a guaranteed minimum spending level each year for K-12 public schools and community college districts 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. In making this change, the State did readjust or “rebench” the minimum guarantee to K-14 education to reflect the removal of childcare from within Proposition 98. In the current 2015-16 budget, the State added some childcare spending back into Proposition 98, but did not rebench the minimum guarantee calculation higher to reflect this additional education expense.

The lawsuit filed by CSBA does not challenge the inclusion of childcare spending in Proposition 98, as CSBA supports funding for before and after school “wraparound” care provided by districts and county offices of education. Rather, the lawsuit alleges that the State’s failure to rebench — which would have increased the minimum guarantee to K-14 education — is an unconstitutional manipulation of the minimum guarantee and sets a dangerous precedent that must be challenged.

“CSBA’s Education Legal Alliance successfully pursues and defends the broad spectrum of statewide public education interests in the courts and before state agencies. Working with school attorneys throughout the state, the Education Legal Alliance is a powerful force taking schools’ side in the courts, and has proven highly effective in both saving and gaining schools literally millions of dollars.”

— Ron Bennett, CEO of School Services of California, Inc.

Status/Outcome:

The lawsuit was filed in September 2015. The briefing schedule and hearing date have not yet been set.



CAASPP State Mandate

California Assessment of Student Performance and Progress (CAASPP) State Mandate Test Claims (2014) 14-TC-01 and 14-TC-04 - Commission on State Mandates

Member(s) Involved:

Plumas County Office of Education; Plumas Unified School District; Porterville Unified School District; Santa Ana Unified School District; Vallejo City Unified School District

Summary:

The California Assessment of Student Performance and Progress (CAASPP) was established by state law and regulations. The primary test in this assessment regime is the Smarter Balanced Assessment (SBA), a computer-adaptive assessment developed by the multi-state SBA Consortium that includes California. To administer the SBA, districts are required to comply with a number of technical and technology-related requirements, including mandated technological specifications and Internet connection speeds. Since these requirements are state-imposed, they constitute mandates for which the State must provide funds to reimburse districts for costs associated with implementing them. Though the State did appropriate some funding that districts can use to help meet the costs related to these requirements, the funds may be used for other expenditures and are not sufficient to meet existing needs for many districts. Moreover, the appropriated funds were one-time only while the related costs will be ongoing, as continued administration of the SBA will require regular upgrades to districts' technology, maintenance, and training.

To address this, the above claimants (four school districts and one county office of education) supported by the ELA, submitted a test claim to the Commission on State Mandates (CSM), the state agency tasked with resolving disputes regarding reimbursement of state-mandated local programs. In its draft proposed decision issued in June 2015, CSM agreed that the technology-related costs indeed constituted a new mandate, but denied on-going reimbursement for two reasons. First, CSM decided that the regulations and statutes cited in the test claim only supported a one-time reimbursement claim. In addition, CSM found that the approximately \$145 million available to fund SBA technology-related costs was sufficient to cover the cost of the mandate.

In response, the ELA supported the claimants in filing a second test claim based on emergency regulations not cited in the initial test claim. This second test claim was accepted and consolidated with the original test claim. Additionally, the ELA filed letters from 77 districts and county offices of education providing data on their technology-related costs and demonstrating an annual need of at least \$600 million.

"ELA is an investment we make in each other. Through this process we can support issues critical to districts that we are left out of otherwise. Their advocacy on behalf of us all is greatly appreciated."

*— Dr. Richard Miller,
Superintendent, Santa Ana USD*

Status/Outcome:

The CSM will publish a revised draft decision on the consolidated test claims in November 2015. A hearing before the CSM on the consolidated test claims is scheduled for January 22, 2016.



Mandate Redetermination and Offsetting Revenues

CSBA v. State of California (2013) Case No. RG11554698 - Alameda County Superior Court

Member(s) Involved:

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

Summary:

The ELA has challenged the statutory scheme for mandate reimbursement by arguing that the scheme, as a whole, frustrates the right of reimbursement under the California Constitution. As a result, districts and county offices of education are being required to provide services without a reasonable expectation of timely reimbursement. The case does not challenge the constitutionality of the mandate block grant explicitly, although as part of the statutory scheme, it is included in the lawsuit. The lawsuit does explicitly challenge the statutes which allow the State to eliminate the reimbursement requirement 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 the various new tactics that the State has devised to avoid reimbursing districts and county offices of education for their mandate claims. One particularly egregious new tactic is to identify “offsetting revenues” as reimbursement for mandate claims. These offsetting revenues are revenues that districts and county offices of education already receive; thus, districts receive no new or additional revenue. 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 has filed another motion to amend its complaint, which seeks to focus the complaint 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.

“Working together with the Education Legal Alliance we are challenging the statutory scheme regarding mandate reimbursement. Districts and county offices of education are being required to provide services without a reasonable expectation of timely reimbursement. Having the support and resources of the ELA to stand up on issues that are negatively impacting several districts and county offices across the state is critically important and extremely valuable.”

—Mike Walsh, Member, Butte County Board of Education
and Member, CSBA Board of Directors

Status/Outcome:

The judge tentatively denied the motion to amend. A final ruling is expected before the end of the year.



Parcel Taxes

Golden Gate Development Company, Inc. v. Albany Unified School District (2015) Case No. A142500 - California Court of Appeal, First District

Member(s) Involved:

Albany Unified School District

Summary:

The plaintiff, a local taxpaying corporation, filed suit for a refund of parcel taxes it paid to the District based on two ballot measures passed in 2009. According to the plaintiff, the taxes were illegally collected since the ballot measures did not meet the uniformity requirement of Government Code section 50079 that a parcel tax rate must be “uniform,” as was decided in *Borikas v. Alameda Unified School District*. In its demurrer, the District argued that the ballot measures could only be challenged under the validation procedures of the Code of Civil Procedure section 860, which requires any such challenge to be brought within 60 days of the passage of the tax measure. The lawsuit was filed outside the 60-day validation period. The plaintiff’s position, if upheld, would subject local parcel tax — as well as bond measures — to legal attack at any time rather than the current 60-day limit.

The trial court agreed with the District’s argument and ordered the complaint dismissed because the plaintiff did not challenge the ballot measures within the 60 days required for validation actions. The plaintiff appealed and the ELA filed an amicus brief in support of the District.

Status/Outcome:

Oral argument was heard in October 2015. The Court has 90 days to file its written opinion.



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 SBE had used an incorrect interpretation of the applicable law. Specifically, SBE improperly found that Aspire's program had a statewide benefit. The matter also 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, 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 has agreed to a settlement on all but one issue. Under the terms of the settlement, Aspire agreed to surrender its statewide benefit charter status and pursue chartering all of its schools at the local level. Aspire also will be ineligible to seek a statewide benefit charter status for a five-year period. The SBE and Aspire agreed to pay the plaintiffs \$300,000 (\$150,000 each) in attorney fees and costs. The one remaining issue - concerning the proper procedure the SBE must use to consider statewide benefit charter petitions - was appealed.

Status/Outcome:

The Court of Appeals held that reference in the law to the adjudicatory procedure provisions of the APA rather than its rulemaking procedure was a legislative error and should not be given effect. The court then remanded the case to the trial court to determine whether SBE's policies and procedures for considering statewide benefit charters were adopted in compliance with the rulemaking provisions of the APA. The trial on the remand issues is expected to begin in early 2016.



Classroom Allocation for Charter Schools

California Charter School Association v. Los Angeles Unified School District (2014) Case No. S208611 - California Supreme Court

Member(s) Involved:

Los Angeles Unified School District

Summary:

School districts are charged with the legal duty to allocate reasonably equivalent facilities to charter schools operating within their boundaries, and to ensure that such facilities are shared fairly among all students attending both charter and traditional district schools. Specifically, state regulations require school districts to provide charter schools with classroom space that is reasonably equivalent to the space provided to its non-charter school students. In dispute here was whether the District must calculate its ratio based on available classrooms or on the actual classrooms being used. The District used the latter and was sued.

The ELA, joined by the California PTA, filed an amicus brief in this matter before the California Supreme Court. The ELA argued that charter school students should be given no greater access to classroom space than district students. Accordingly, school districts must be granted the discretion to declare classrooms as non-teaching spaces pursuant to Proposition 39's directive that facilities be "shared fairly."

Status/Outcome:

The California Supreme Court ruled in favor of the ELA and the District on the issue of how to calculate the number of "reasonably equivalent" classrooms the District needed to provide to a charter school. The Court held that the District need only count those classrooms, including non-teaching classrooms, actually used by district students.



Charter School Facility Location

Westchester Secondary Charter School v. Los Angeles Unified School District (2015) Case No. B261234 - California Court of Appeal, Second District

Member(s) Involved:

Los Angeles Unified School District

Summary:

State law requires school districts and county offices of education to “make reasonable” efforts to provide facilities “near” to where a charter “wishes to locate.” The appellate court’s decision in favor of the District clarified this requirement. The court held that the District did not have to offer space at the specific location requested by a charter school. Additionally, the court held that the District could consider the impact on district students and students from other charter schools in determining whether to offer space to the charter.

“The ELA does a fantastic job supporting districts in the courtroom, but it also provides support beyond the courtroom. Having the ELA available as a resource is a must for any district.”

— Jacqueline Minor,
General Counsel, Oakland USD

The California Charter School Association (CCSA) had requested the California Supreme Court to depublish the appellate court decision. The ELA filed an amicus letter opposing CCSA’s request to have the appellate decision depublished arguing that it properly met the conditions for publication.

Status/Outcome:

The California Supreme Court denied CCSA’s request to depublish the opinion.



Separation of Church and State

Sedlock v. Baird (2014) Case No. D064888 - California Court of Appeal, Fourth District

Member(s) Involved:

Encinitas Union School District

Summary:

The District began offering yoga as an alternative to physical education at one of its school sites during the 2011-2012 school year. In 2012-2013, based upon the positive results of the pilot program the year before, all nine of the District's schools began offering yoga as well as traditional physical education for the number of minutes required by state law. The District developed a secular curriculum for the yoga class by removing any cultural references and by omitting Sanskrit language and characters. For example, the "lotus" position was renamed the "crisscross apple-sauce" position. Following issues raised by a few parents during the "pilot" year, the District permitted parents to have their children opt out of the yoga class. In 2012-2013, 19 of 800 students chose to opt out.

Nonetheless, two parents sued the District on the grounds that the Yoga class violated the First Amendment's requirement to separate government and religion. The Superior Court conducted a six-day court trial and found that, although yoga was "religious," the curriculum developed by the District did not advance religion because it was being taught without any connection to Hinduism or to other religions. The court also found that the "moral teachings" included in the curriculum were "universal" and that the District's purpose in providing the class, to improve the health and wellness of its students, was secular in nature and without any "excessive entanglement" with religion.

The parents appealed the ruling to the Court of Appeal and the ELA filed an amicus brief in support of the District.

Status/Outcome:

The appellate court upheld the trial court's decision in favor of the District and the ELA, concluding that since the yoga program created by the District emphasized the physical and mental well-being of students, it was not an impermissible establishment of religion in violation of the California Constitution.



Teacher Employment

Vergara v. California (2015) Case No. B258589 - California Court of Appeal, Second District

Member(s) Involved:

None

Summary:

A group of nine students represented by Students Matter, a national nonprofit organization, filed suit challenging California's certain key teacher employment statutes in the California Education Code: (i) the statute governing tenure; (ii) the statutes governing the dismissal process; and (iii) the statute governing the process required to lay off teachers. The plaintiffs alleged that the statutes violate the equal protection provisions of the California Constitution because they permitted "grossly incompetent teachers" to gain tenure and remain in the classroom and that statutes disproportionately affected low-income students and students of color.

The trial court ruled that the statutes were unconstitutional because the plaintiffs were denied their fundamental right to an education and the statutes disproportionately impacted poor and minority students. The case is now on appeal.

After receiving feedback from an ad hoc committee of school board members and from CSBA's Board of Directors, the ELA worked with two education law firms (Dannis Woliver Kelley and Lozano Smith) to write an amicus brief that summarized the trial court's constitutional analysis, offered the experience that school board members have with implementing the statutes, and described an alternative statutory scheme that would be both constitutional and viable in light of the trial court's ruling.

Status/Outcome:

This case is fully briefed and awaiting oral argument.



Lease-Leaseback and Conflict of Interest

Davis v. Fresno Unified School District (2015) Case No. F068477 - California Court of Appeal, Fifth District

Member(s) Involved:

Fresno Unified School District

Summary:

This case concerns the legality of a lease-leaseback agreement and the application of Government Code section 1090. The appellate court, in ruling on a demurrer, struck down the District's lease-leaseback school construction contract, holding that the "leaseback" portion of the contract must be a genuine lease. The court explained that to be genuine the lease must contain a financing component and a lease term during which the District must occupy and use the improved property. Since the matter was on appeal from a demurrer, the appellate court remanded the case back to the Superior Court to make an evidentiary determination as to whether the leaseback portion was a genuine lease.

The appellate court also found that Government Code section 1090 applies to corporate consultants hired by a school district or county office of education. Section 1090 provides that if an officer or employee of a school district or county office of education has a financial interest in a contract and participates in the governmental decision that led to the contract, then the official or employee has a conflict of interest that could subject him or her to civil and even criminal penalties. The issues raised on demurrer were also remanded back to the superior court for resolution.

The District and the contractor involved in the lease-leaseback contract petitioned the California Supreme Court to review the case and the ELA filed a letter in support of the District's request.

Status/Outcome:

The California Supreme Court denied the petition to review the case. As a result, the Court of Appeal decision stands.



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 school districts to disclose, upon request, communications stored on personal electronic devices and on private network accounts that are otherwise not accessible to the agency. The Court of Appeal ruled that the CPRA does not impose such a duty on the grounds that the burden of retrieving such communications would be intrusive to the privacy rights of the individual and the burden on the public agency of satisfying the request would be extremely difficult to complete. The plaintiffs appealed the decision to the California Supreme Court.

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

Status/Outcome:

This case is fully briefed and awaiting oral argument.



Public Records

Newark Unified School District v. Superior Court (2015) Case No. A142963 - California Court of Appeal, First District

Member(s) Involved:

Newark Unified School District

Summary:

In this case, the District inadvertently disclosed documents covered by the attorney-client privilege in response to a California Public Records Act (CPRA) request. Within hours of the disclosure, the District requested the return or destruction of the privileged documents but the District's request was refused. The District then sought a restraining order in Superior Court to prevent review or dissemination of the privileged documents. The Superior Court denied the request for a restraining order but stayed its ruling pending appeal.

The District appealed and the Court of Appeal sided with the district, holding that the inadvertent disclosure of privileged documents did not constitute a waiver of that privilege for purposes of the CPRA. The party that made the CPRA request is now asking the California Supreme Court to review the case and the ELA has filed a letter opposing such a request.

Status/Outcome:

The California Supreme Court granted the Petition for Review, however further action has been deferred pending consideration and disposition of a related issue in another matter (*Ardon v. City of Los Angeles*) before the Court.



Special Education Attorneys' Fees Award

C.W. et al. v. Capistrano Unified School District (2013) Case No. 12-57315 - Federal Court of Appeal, Ninth Circuit

Member(s) Involved:

Capistrano Unified School District

Summary:

This case is an appeal of a decision by the United States District Court, Central District, awarding attorney's fees to the District in regards to a parent's lawsuit against it that the court found to be frivolous, unreasonable, and without foundation. The court found that the plaintiffs pursued the case for the improper purpose of harassment, unnecessary delay, and needlessly increasing litigation costs. The parents appealed.

ELA filed its amicus brief supporting the District, arguing that the District Court properly exercised its discretion. While rare, the ability of the district court to award attorney's fees to the defendant is necessary to prevent abuse of special education laws.

Status/Outcome:

The Ninth Circuit Court of Appeals affirmed in part and reversed in part the district court's award of attorney's fees and costs to the District. The appellate court agreed with the district court that the Americans with Disabilities Act and 42 U.S.C. §1983 claims were frivolous and affirmed the award of attorney's fees and costs for representation relating to those claims. The Court found, however, that the Individuals with Disabilities in Education Act and the Rehabilitation Act claims were not frivolous and/or brought for an improper purpose, and reversed the district court's decision to award attorney's fees and cost related to those claims.



Special Education Issues Including Attorneys' Fees Award

T.B. v. San Diego Unified School District (2013) Case No. 12-56060 - Federal Court of Appeal, Ninth Circuit

Member(s) Involved:

San Diego Unified School District

Summary:

This case involves a number of special education issues of statewide importance, including the grounds for awarding of attorneys' fees under the Individual with Disabilities in Education Act (IDEA), whether the District's statutory offer of settlement was more favorable than the district court's decision, the impact of settlement offers made before a due process hearing, compliance with the IDEA when dealing with families who remove students from school, the required elements for bringing a claim under the Americans with Disabilities Act or the Rehabilitation Act, and the importance of good faith on the part of district employees. The district court ruled for the District, which was appealed to the Ninth Circuit Court of Appeals.

The ELA filed an amicus brief in this matter in March 2013. The ELA argued that the plaintiffs misinterpret the requirements under IDEA. For instance, the plaintiff's legal position would essentially create an automatic right to money damages even when there was no mention of FAPE.

Status/Outcome:

The Ninth Circuit Court of Appeals affirmed the lower court's summary judgment in favor of the District on all counts except that the appellate court rejected the district court's conclusion that the District's statutory offer of settlement was more favorable than the district court's decision. Additionally, the appellate court vacated the district court's award of minimal attorneys' fees, holding that a larger award was appropriate. The fee award and the count on which the court reversed have been remanded for further proceedings in the district court.



Special Education Attorneys' Fees Award

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

Member(s) Involved:

Irvine Unified School District; Orange County Office of Education

Summary:

A student with a disability filed a due process complaint against the 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 district court agreed. On appeal, however, the Ninth Circuit Court of Appeals held the District responsible rather than CDE. Though the student and the District were never on opposite sides in the case, 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:

This case is fully briefed and awaiting oral argument.



Special Education Assessments

L.O. v. Paso Robles (2015) Case No. 14-55800 - Federal Court of Appeal, Ninth Circuit

Member(s) Involved:

Paso Robles Unified School District

Summary:

This fact-heavy case involves a plaintiff who alleged that a student (who was 3 years old at the start of the facts that are relevant to the case) was denied a Free and Appropriate Public Education (FAPE) because (i) no autism assessment was done despite indications that the student could be autistic, (ii) no reassessment was done despite additional indications that the student could be autistic, and (iii) as a result of the failure to identify the student as being eligible for autistic services, the student failed to receive the necessary services.

The Individuals with Disabilities in Education Act requires districts to assess students in all areas in which there is evidence of a suspected disability. The legal issue here is the threshold that constitutes sufficient evidence to trigger the assessment requirement for a particular disability.

The District prevailed at the administrative level and at the district court, which held that the District properly assessed the student based on the available information as well as the student's responsiveness to and availability for assessments. In addition, the court found that there was no basis to believe that a reassessment was necessary. Finally, the court held that even if the District should have done additional assessments, there was no harm done because the student received the same services he would have received had those assessments been done and he been determined to qualify for autistic services.

The plaintiff has appealed and the ELA filed an amicus brief in support of the District.

Status/Outcome:

This case is fully briefed and awaiting oral argument.



California Environmental Quality Act Categorical Exemptions

Berkeley Hillside Preservation v. City of Berkeley (2014) Case No. S201116 - California Supreme Court

Member(s) Involved:

None

Summary:

This case involves the application of the significant effects exception to the California Environmental Quality Act (CEQA) categorical exemptions. Berkeley Hillside Preservation filed a petition for writ of mandate challenging the City of Berkeley's approval of use permits to construct a large residence on property inside the city limits. The Alameda County Superior Court denied the petition finding that the proposed construction was categorically exempt under CEQA. The appellate court reversed the judgment and ordered the trial court to issue a writ of mandate directing the City to set aside its approval of use permits and its finding of a categorical exemption, and to order the preparation of an Environmental Impact Report.

If the plaintiff had prevailed, it would have provided opponents of public construction projects an easier method to challenge a categorical exemption for a project by eviscerating the "unusual circumstances" exception. In lieu of undertaking additional environmental analysis, school districts and county offices of education commonly use the categorical exemption to permit the placement on school grounds of up to 10 classrooms or portables.

The ELA filed an amicus brief in this matter, and was joined by the Regents of the University of California and the Board of Trustees of the California State University. The brief argues that to hold that simple allegations of significant impacts are per se "unusual circumstances" would effectively halt the use of categorical exemptions by school districts, county offices of education, and other public agencies. This would be contrary to CEQA's intent and purpose.

Status/Outcome:

The California Supreme Court reversed the appellate court's decision in a favorable ruling for public agencies. The Supreme Court's decision maintains the ability of a public agency to exempt itself from CEQA's requirements when relatively routine projects are at issue, thus avoiding delay and expense.



Special District Assessment

Manteca Unified School District v. Reclamation District No. 17 (2015) Case No. C077906 - California Court of Appeals, 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 the District.

The District challenged the assessment, relying on Water Code section 51200's explicit exemption of school districts from such assessments. RD 17, in turn, 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.

This issue has statewide importance because any district that owns property in an RD could be required to pay an RD assessment. If RD 17 is successful, then other school districts would be liable to pay these assessments, many of which have no sunset date.

Status/Outcome:

This case is fully briefed and awaiting oral argument.



Limitation of Public Contract Code Section 7107

Rio School District v. FTR International, Inc. (2014) Case No. B238618 - California Court of Appeal, Second District

Member(s) Involved:

Rio School District

Summary:

The issues in this case revolve around the interpretation of what a bona fide “dispute” means in Public Contract Code section 7107. Here, the District withheld over \$600,000 in response to stop notices filed by subcontractors on a new elementary school construction project. Although the withholding did not exceed the 150% withholding limit imposed by section 7107, the Superior Court ruled that the District had an ongoing obligation to release the funds once any of the underlying “disputes” went away and ordered the district to pay the contractor millions in a fee award. However, this decision disregarded the clear meaning of section 7107, and placed an unreasonable burden on the public agency to determine if and when a dispute goes away.

The District appealed the ruling and the ELA filed an amicus brief supporting the District’s position. The ELA argued that the ruling by the trial court would undermine the purpose of section 7107, which is to encourage public entities such as school districts to timely pay general contractors and provide general contractors with a remedy when public entities fail to pay.

Status/Outcome:

The appellate court issued a ruling that was mostly unfavorable to the District. The appellate court did, however, remand the matter back down to the trial court to reconsider the amount of the fee award.



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