

CSBA'S EDUCATION LEGAL ALLIANCE



# Alliance Report

FALL/WINTER 2012



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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.

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## New Alliance Cases

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ALLIANCE HAS BECOME INVOLVED IN THE FOLLOWING MATTERS:

### Attorneys' Fees

*Crews v. Willows Unified School District – California Court of Appeal, 3rd District*

**UPDATE:** The amicus brief in support of the District's position was filed on October 3, 2012.

#### *Summary of Case:*

Willows Unified School District requested amicus support at the appellate court level. The appeal was filed by a news reporter/newspaper legal counsel challenging the lower court's decision that plaintiff pay the District's attorneys' fees based on a frivolous filing relating to the Public Records Act. The attorneys' fees provision is in place to preserve the remedy that school districts have when presented with bad faith, onerous, time consuming and unwarranted requests for public records, some of which are filed with the intent to harass the public entity. Here, the court found that the filing was frivolous because the District had initially responded to the document request before being served with a writ seeking the production of documents.

### California Environmental Quality Act Categorical Exemptions

*Berkeley Hillside Preservation v. City of Berkeley - California Supreme Court*

**UPDATE:** CSBA submitted a letter to the California Supreme Court supporting the City's request for Supreme Court review of the Appellate Court's decision, which was granted on May 23, 2012. CSBA will be filing an amicus brief in support of the City's position which will be due in November 2012.

#### *Summary of Case:*

This case involves the application of the significant effects exception to the California Environmental Quality Act (CEQA) categorical exemptions. Berkeley Hillside Preservation ("Berkeley Hillside") filed a petition for writ of mandate challenging the City of Berkeley's ("City") approval of use permits to construct

a large residence on property inside the city limits. The trial court denied the petition finding that the proposed construction was categorically exempt under the California Environmental Quality Act, Cal. Public Resources Code §21000, et seq. The First Appellate Court reversed the judgment and ordered the trial court to issue a writ of mandate directing the City to set aside the approval of use permits and its finding of a categorical exemption, and to order the preparation of an Environmental Impact Report.

This case provides project opponents an easier method to challenge a categorical exemption for a project by eviscerating the “unusual circumstances” exception. As a result, agencies may be forced to undertake additional environmental analysis in order to justify the use of any categorical exemption. The Court’s decision to merge the two-part test of the “significant effects” exception into a single determination will have significant impacts on public agencies that have long used categorical exemptions as permitted on certain activities pursuant to the CEQA. School districts and county offices of education commonly use the categorical exemption that permits the location on school grounds of up to 10 classrooms including portables. To hold that simple allegations of significant impacts are per se “unusual circumstances” then preclude the use of a categorical exemption, will all but halt the use of categorical exemptions by public agencies, including school districts and county offices of education. By doing so, would be contrary to the CEQA’s intent and purpose. The case also potentially empowers any individual “expert” to offer an opinion in order to block the use of a categorical exemption.

## Pending Case Updates

### Invalidation of Aspire’s State Charter

*CSBA v. State Board of Education - California Court of Appeal, 1st District*

**UPDATE:** On June 22, 2012, the Alameda Superior Court issued a judgment in favor of CSBA and issued a writ of mandate directing the State Board of Education (“SBE”) to set aside its 2007 and 2011 approvals of a statewide charter for Aspire Public Schools and requiring SBE to adopt regulations in compliance with the Education Code. The Court set a one-year deadline for SBE to comply with the writ in order to mitigate any hardship to presently enrolled students and facilitate the transition of schools currently operating under Aspire’s statewide charter. The Court clarified that the one-year timeline was not set to enable Aspire to open additional schools under that charter. In August 2012, SBE and Aspire filed appeals to the trial court’s decision.

The parties met recently to discuss resolving the Court’s order, including revising legislation and amending regulations regarding SBE’s hearing process and procedures, the transition of Aspire Schools, and the reimbursement of attorneys’ fees, which is over \$500,000.

#### *Summary of Case:*

CSBA challenged the SBE’s 2007 approval of Aspire Public Schools’ statewide charter petition because it believed that SBE used an incorrect interpretation of the Education Code provision allowing state charters, including the failure to make written findings that Aspire’s program had a statewide benefit. The matter also included several procedural claims. CSBA was joined in this lawsuit by ACSA, CTA, and Stockton USD.

The trial court agreed with SBE and essentially dismissed the case on demurrer, but the Court of Appeal in July 2010 reversed and ruled in favor of CSBA. This allowed the case to go forward, but did not actually invalidate the approval, leaving the decision to the trial court. On March 15, 2012, the trial court granted CSBA’s Petition and on June 22, 2012, issued a writ of mandate directing SBE to set aside its approval of a statewide charter for Aspire, and directing SBE to use only policies and procedures that have been promulgated in compliance with the Administrative Procedures Act in its consideration of statewide charters. The Court gave the SBE one year to comply with its orders.

## School Finance

*Robles-Wong v. State of California – California Court of Appeal, 1st District*

**UPDATE:** On July 6, 2012, CSBA filed its Opening Brief with the Appellate Court. The State responded in October 2012, and CSBA's Reply is due in January 2013. After the briefing is complete, the Court will schedule a date for oral argument.

### *Summary of Case:*

CSBA and several other associations, individual plaintiffs, and school districts filed this lawsuit which alleges constitutional violations of both Article IX (the Education article) and equal protection. The trial court essentially dismissed the Article IX claims finding that the State constitution does not guarantee any particular level of education or funding, or any specific funding system. An amended complaint was filed but again dismissed. However, CSBA and the other plaintiffs declined to amend the complaint further and in January 2012, filed an appeal with the First District Court of Appeal challenging the findings of the trial court.

## Proposition 98

*CSBA v. State of California – California Court of Appeal, 1st District*

**UPDATE:** On July 27, 2012, CSBA filed an appeal challenging the June 1, 2012 Alameda County Superior Court's ruling in the State's favor that the State's constitution and ballot language do not guarantee a minimum level of base funding for schools under Proposition 98. CSBA's opening brief is due in December 2012. However, since the Governor inserted language in the recently passed Proposition 30 that now allows the State to legally use the funding mechanism that this lawsuit challenged, the primary issue of this lawsuit has now become moot.

### *Summary of Case:*

This case challenges the 2011-12 budget action and particularly the Proposition 98 calculation and appropriation. It alleges that when the State transferred sales tax revenues out of the General Fund into a special local government fund, it was required to "re-bench" or re-calculate funding to hold education harmless. CSBA, Los Angeles USD, San Francisco USD, Turlock USD, and ACSA filed an action in September 2011 in Superior Court in San Francisco. In March 2012, the court issued a tentative ruling holding that there was nothing in Proposition 98 and the ballot materials that precluded the Legislature from assigning revenue to a special fund or that required the Legislature to "re-bench" following the transfer of what previously were considered general funds into a special fund.

The Plaintiffs challenged the tentative ruling at a hearing on March 28, 2012, arguing that if the Legislature and the Governor were able to manipulate Proposition 98 by merely taking sales and utility tax revenue from the general fund that had always been included in the Proposition 98 formula, and simply transferring it into a special fund set up solely to defeat the minimum guarantee established by Proposition 98 without holding public education harmless, this action would open the floodgates for the Legislature to take similar measures leaving the voters without their guarantee and without their minimum funding for public education. At hearing the ELA argued that Proposition 98 was approved by the voters to avoid this very type of evasion and manipulation by creating a formula-based funding mechanism in order to take the politics out of school funding. On June 1, 2012, the trial court judge ruled in favor of the State, finding that the State's constitution and ballot language do not guarantee a certain level of base funding for schools under Proposition 98.



## Mandate Redetermination

*CSBA v. State of California - California Superior Court, Alameda County*

**UPDATE:** On September 25, 2012, CSBA amended its lawsuit first filed in January of 2011, which initially challenged the constitutionality of the provisions in the 2010-11 Budget Act and related trailer bills, which created a new test claim procedure enabling the State to “redetermine” previously established mandates to no longer be reimbursable mandates. This included the high school graduation requirement and behavioral intervention plans for special education students. The complaint was amended to include in its challenge of the mandate reimbursement process as a whole, the 2012-13 Budget Act and the Government trailer bill for allocating only \$36,000 to fund the 38 mandates (State later added five more mandates without increasing the grant amount) that were included in the new mandate block grant program which in contrast was funded at \$166 million.

Although the complaint now includes information about the block grant and the deficiencies in the block grant, it does not directly challenge the constitutionality of the block grant or seek to invalidate or set aside the 2012-13 appropriation.

What the lawsuit does request is that the court declare that the current mandate system as a whole violates the constitutional requirement for reimbursement and that it should be set aside and a new system devised for mandate reimbursement. This would not preclude a block grant approach, but any block grant legislation would have to be evaluated in terms of whether it (alone or with other provisions) meets the constitutional requirements.

### *Summary of Case:*

This case is a follow-up to the Mandate Deferral matter discussed below, wherein CSBA successfully set aside legislative attempts to dictate to the Commission on State Mandates on how to determine mandates in ways that were unfavorable to districts. CSBA prevailed on the Mandate Deferral case, receiving over \$290,000.00 in attorneys’ fees. Pending the resolution of the Mandate Deferral case, the Legislature, in 2011, came up with a new series of statutory changes designed to eliminate payment on most education mandates through a “redetermination” process. By filing a writ of mandate in January, 2011, CSBA challenged the new provisions, and in particular their application to the Behavioral Intervention Plan (“BIP”) mandate and the High School

Science Graduation Requirements mandate. CSBA has also alleged that if the new provisions are legal, the entire mandate system violates the constitutional reimbursement requirement as it frustrates the districts’ right to reimbursement. CSBA is joined by several districts including San Diego USD, and the two COEs involved in those mandates, Butte and San Joaquin. The amended complaint challenges the mandate reimbursement process as a whole, the 2012-13 Budget Act and the trailer bill.

In addition to the lawsuit, CSBA is participating in the Commission on State Mandates’ regulatory effort to establish Parameters, Guidelines and Reasonable Reimbursement Methodologies for BIPs. The Commission is expected to release its analysis and summary regarding its guidelines and reasonable reimbursement methodologies in or around September or November, with a tentative date set in December to review and adopt the new parameters, etc.

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THE FOLLOWING ARE PENDING MATTERS WHERE CSBA/ELA HAVE PROVIDED AMICUS SUPPORT:

## Mandated Costs Audit/Attorney’s Fees

*Clovis Unified School District v. State Controller – California Court of Appeal, 3rd District*

**UPDATE:** Oral argument before the Appellate Court regarding the Attorneys’ fees award is scheduled for November 13, 2012.

This case involved the State Controller’s Office (SCO) imposing unreasonable document requirements in audits of mandated cost claims which thwart school districts from receiving reimbursement for state-mandated costs. CSBA filed an amicus brief in support of the District’s position. After the Court held for the Districts, the State appealed the attorneys’ fees awarded to the Districts. CSBA has contributed \$50,000 to this matter, and if the appeal is successful, it will receive its prorated share once the appeal process is over.

## Special Education Services to Incarcerated Adults

*Los Angeles Unified School District v. Garcia – California Supreme Court*

**UPDATE:** The amicus brief in support of the District’s position was filed on September 6, 2012.

### *Summary of Case:*

At issue in this case is a determination of which public entity is responsible to provide special education services to qualifying adult individuals ages 18 to 22 who are incarcerated in county jails, and since the law is silent to this issue, whether the responsibility should default to the State. Currently, there is no controlling authority addressing the application of Education Code Section 56041 to incarcerated adult students in need of special education services. Education Code Section 56041 only states that the local education agency where the “parents” reside is the responsible district. However, applying Section 56041 to incarcerated adult students is impractical with regard to the determination of “residency” for students with exceptional needs. Los Angeles Unified School District (“LAUSD”) has argued that California law simply does not delegate responsibility for providing special education services to eligible students in adult county jails, and absent such delegation, that responsibility should otherwise default to the state. LAUSD contested these issues at the due process hearing but the administrative law judge (“ALJ”) ruled in favor of the student. LAUSD appealed the issue to the Federal District Court, which upheld the ALJ’s ruling. LAUSD appealed to the Ninth Circuit, which then sent the issue to the California Supreme Court to decide the “authoritative answer to California’s educational agencies.” It was accepted by the Supreme Court on March 28, 2012. On September 6, 2012, the Alliance file an amicus brief in support of LAUSD’s position that the State should provide special education services to incarcerated adults between the ages of 18 to 22.

## Revocation Proceedings for Charter Schools

*Today’s Fresh Start v. Los Angeles County Office of Education - California Supreme Court*

**UPDATE:** Awaiting Supreme Court’s notification for oral argument.

### *Summary of Case:*

Today’s Fresh Start Charter School claimed that a charter school authorizer could not act to revoke a charter without bias if it was not first required to

hold an evidentiary hearing before a hearing officer or other “neutral” decision maker who would then make a recommendation to the governing board. The Appellate Court rejected this analysis and found that Los Angeles County Office of Education (“LACOE”) relied on the due process established in Education Code Section 47607 (e), which requires only that following a public hearing, written factual findings which are supported by substantial evidence, be made by the charter authorizer prior to revocation. The Appellate Court also found that LACOE provided plenty of notice and opportunity to Today’s Fresh Start to address a possible revocation before action was taken by the Los Angeles County Board of Education. The Supreme Court granted Today’s Fresh Start’s request for review of the decision.

The Alliance filed an amicus brief on March 19, 2012, in support of the LACOE’s opposition to Today’s Fresh Start’s request to the California Supreme Court to overturn the appellate court’s decision, in order to preserve the favorable appellate court ruling of keeping any formal evidentiary hearings requirement out of the charter school revocation process.

## Parcel Tax

*Borikas v. Alameda Unified School District – California Court of Appeal, 1st District*

**UPDATE:** The Appellate Court heard oral argument on September 11, 2012, and CSBA is awaiting a decision.

### *Summary of case:*

The District’s voters approved a parcel tax in 2008 that implemented variable tax rates for residential, commercial and industrial property. Taxpayers challenged the parcel tax claiming that taxes had to be the same or “uniform” regardless of the classification of the property. The plaintiffs lost at the trial court and have appealed. CSBA filed its amicus brief in December 2011, supporting the decision by the school district to ask voters to approve different tax rates for different types of property, as had been approved by the voters in several other jurisdictions in California.



# Letters in Support

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THE FOLLOWING AMICUS LETTERS WERE RECENTLY SUBMITTED TO THE CALIFORNIA SUPREME COURT AND THE SECOND APPELLATE DISTRICT COURT IN SUPPORT OF PETITIONS FOR REVIEW AND ELA IS AWAITING THE COURTS' DECISIONS:

## Urge Court to Expedite Case Concerning Calculation of Funding

*Los Angeles Unified School District v. County of Los Angeles – California Court of Appeal, 2nd District*

### *Summary of Case:*

The ELA provided a letter of support to the Second Appellate District Court urging the Court to grant the Motion for Calendar Preference recently filed by the Los Angeles Unified School District (“LAUSD”). The Alliance believes that the matter needs to be expedited due to the possible impact the trial court’s interpretation and implementation of new state statutes could have on school districts statewide, and the tremendous impact of lost revenue if the calculation is not addressed immediately prior to allocation.

The underlying appeal filed by LAUSD concerns a dispute over the implementation of the rule of law announced by the Court of Appeal two years ago in *Los Angeles Unified School District v. County of Los Angeles et al.* (2010) 181 Cal.App.4th 414, which held that local taxing entities’ entitlements to redevelopment pass-through payments must be calculated in a manner that acknowledges the diversion of local property tax revenues to schools via the Educational Revenue Augmentation Fund (“ERAF”). Recent legislation dissolving redevelopment in California requires county auditor controllers to continue to allocate statutory pass-through payments to local taxing entities using the formula addressed in the LAUSD litigation.

Due to the budget crisis, the full measure of pass-through funding is urgently needed by schools throughout California, and further delay in proper payment will undermine their ability to fulfill their educational mission.

## Agree to Deviate from Seniority Layoff to Avoid Violating Students’ Constitutional Rights

*Reed v. United Teachers Los Angeles and Los Angeles Unified School District – California Supreme Court*

**UPDATE:** Supreme Court denied the Petition for Review on October 24, 2012.

### *Summary of Case:*

The ELA provided a letter of support to the California Supreme Court urging the Court to grant review of this matter. In this case, parent and student plaintiffs of three Los Angeles Unified School District (“LAUSD”) schools filed for injunctive relief to prohibit layoffs by the LAUSD at their three schools based strictly on seniority. A preliminary injunction was granted after the trial court found that the Education Code authorizes school districts to deviate from seniority to protect students’ constitutional rights to a basic education, and that constitutional violations were likely to occur. Neither party sought review of the trial court’s order. Thereafter, plaintiffs, LAUSD and the United Teachers Los Angeles (“UTLA”) entered into settlement negotiations. Plaintiffs and LAUSD, as part of their settlement agreement, agreed not to exercise layoffs at Plaintiffs’ three schools and at up to 42 other schools where the same constitutional violations would likely occur. The trial court granted preliminary approval to the settlement and held a fairness hearing, which included extensive discovery by all parties, and a trial that was held over a four-day period. The trial court found the settlement to be fair and reasonable and consistent with teacher seniority rights, and entered judgment accordingly.

The Court of Appeal reversed the trial court’s decision finding that the hearing violated UTLA’s due process rights because it potentially altered seniority rights without a trial on the merits.

## Rulings/Settlements in Alliance Cases:

THE FOLLOWING MATTERS, IN WHICH THE ALLIANCE HAS PARTICIPATED BY AMICUS SUPPORT, HAVE RECENTLY BEEN RESOLVED:

### Local Authority Discretion regarding Charter School Facilities

*Bullis Charter School v. Los Altos Unified School District – California Superior Court, Santa Clara County*

**UPDATE:** On August 7, 2012, CSBA submitted its amicus brief and application to the Santa Clara Superior Court. Oral argument occurred on August 30, 2012, and on September 26, 2012, the judge ruled in favor of the school district. After oral argument, Bullis Charter School (“Bullis”) filed a new complaint setting forth the same alleged violations in this action.

#### *Summary of Case:*

This matter is being litigated at the Superior Court in Santa Clara County. CSBA was previously involved by submitting an amicus letter of support to the Supreme Court to review the appellate court’s decision to remand the matter back to the Superior Court regarding the District’s offer of reasonable equivalent facilities for the 2009-10 school year. Thereafter, the District made another Proposition 39 offer to Bullis relating to facilities for the charter school during the 2012-2013 school year. However, Bullis is demanding exclusive use of an entire school site, which would displace all of the traditional students of the District currently attending that school site.

CSBA became involved in this matter at the trial court level for a variety of reasons, including the statewide interest of ensuring that school district boards continue to have discretion to determine, after making findings at a public meeting, what are reasonably equivalent facilities for charter school operation within its boundaries and community without being required to vacate an existing school site because the charter school can fit all of its students on one site.

## Board’s authority to approve/deny Charter petitions

*United Teachers Los Angeles v. Los Angeles Unified School District*

**UPDATE:** On June 28, 2012, the Supreme Court issued a decision in favor of the District’s and CSBA’s positions. The Supreme Court agreed that Education Code Section 47605 establishes a comprehensive process for approval of charter petitions, spelling out precisely what is expected of a charter applicant. Any collective bargaining agreement provision that delays the timelines to make a decision on a charter school petition set forth in Education Code Section 47605 or adds to a petitioner’s statutory obligations for securing approval of a charter that conflicts with Education Code Section 47605 may not be enforced.

#### *Summary of Case:*

This case involved whether the courts may compel binding arbitration regarding alleged violations of a board’s process concerning the approval of a charter petition, as presented pursuant to provisions upon which a grievance is based, even though collective bargaining agreements (“CBA”) are specifically preempted/invalidated by Education Code Section 47611.5. The Code section establishes that a board’s approval or denial of a charter school petition shall not be controlled by CBAs. On August 18, 2010, the ELA submitted an amicus brief in support of the District’s position and the appellate court’s decision. In June 2012, the California Supreme Court upheld the appellate court’s decision which held that Education Code 47611.5 is a defense to be presented to an arbitrator, but in no way may interfere with the board’s approval process.

## Attorneys' Fees Reimbursement Once Discipline Hearing Scheduled

*Boliou v. Stockton Unified School District - California Supreme Court*

**UPDATE:** On August 6, 2012, the Alliance submitted a letter to the Supreme Court supporting the District's review of the appellate decision. On September 12, 2012 the request for review and depublication was denied.

### *Summary of Case:*

The Appellate Court held that based on the language of the relevant statutes, if a teacher demands a hearing on disciplinary charges and the governing board exercises its option to schedule a hearing instead of rescinding the charges, it may be required to reimburse the teacher's attorneys fees, even if the charges are later rescinded prior to the hearing. The Court held that a school district does not have the ability to unilaterally rescind charges and dismiss the hearing. Instead, the hearing must still be commenced and a written decision containing a disposition shall be made.

Although CSBA/ELA believes that the Appellate Court misinterpreted and misapplied Education Code Section 44944, the Supreme Court has denied the District's request to review the appellate court's decision.

## Temporary teachers hired in categorical programs

*Stockton Teachers Association v. Stockton Unified School District—California Supreme Court*

**UPDATE:** On June 13, 2012, the Supreme Court denied review of the Appellate Court decision in this matter which held that, except in very limited circumstances, employees hired for categorically funded programs must be classified as probationary employees and may only be released as temporary employees if they are terminated at the expiration of a categorically funded program.

### *Summary of Case:*

After an Administrative Law Judge, in 2009, found that the District was not prohibited from entering into temporary agreements with employees working in categorically funded programs under Section 44909, the Stockton Teachers Association filed a petition for writ of mandate arguing that proper classification of teachers assigned to categorically funded programs is probationary rather than temporary. The trial court denied the writ, finding that a teacher may be classified as temporary when the teacher is working in categorically funded programs.

On appeal, the Third District Court of Appeals reversed the trial court's decision and held that except in very limited circumstances, employees hired for categorically funded programs must be classified as probationary employees and may only be released as temporary employees if they are terminated at the expiration of a categorically funded program. A request for re-hearing, which the Alliance supported with an amicus letter, was denied by the appellate court. In April 2012, CSBA filed a letter in support of the District's Petition for Review with the California Supreme Court, and on June 13, 2012, the District's Petition was denied.



*The California School Boards Association's*

## **Education Legal Alliance**

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