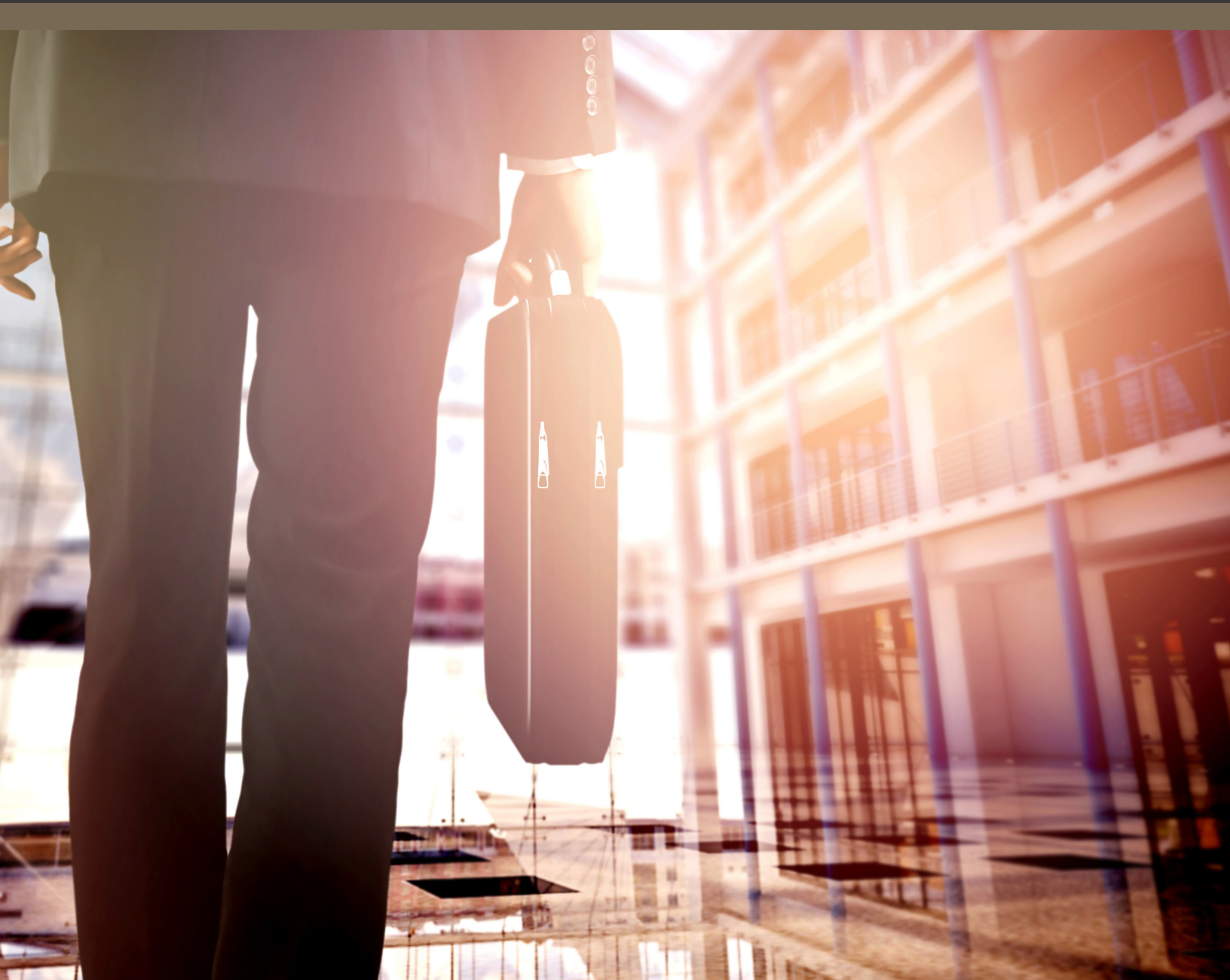




education legal alliance



annual report **2016**





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-four 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. In this case, *CSBA v. Cohen*, the Superior Court ruled in CSBA’s favor.
- 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. For example, in *Anderson Union HSD v. Shasta Secondary Home School*, all charter schools with limited exceptions must be located inside the boundaries of their authorizer.
- 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.

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 become part of one of the most dynamic and successful legal entities fighting on behalf of 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.

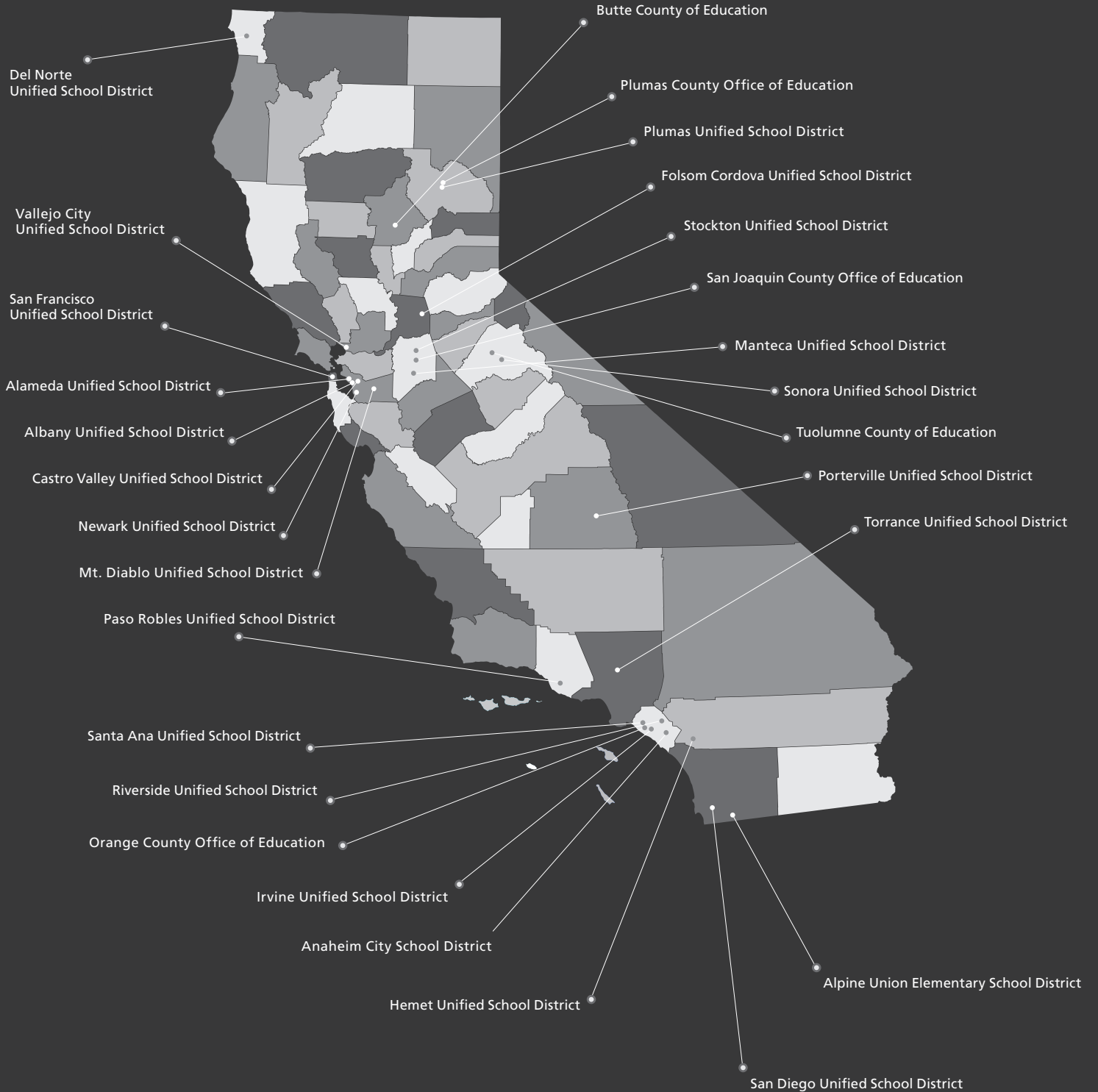
Vernon M. Billy
CEO & Executive Director,
California School Boards Association

Keith J. Bray
Director, ELA and General Counsel,
California School Boards Association

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Members with whom the ELA worked in 2016





we fight better when we stand together

What is the Education Legal Alliance?

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

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

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

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

"The ELA works tirelessly to transform the landscape of public education into one that is fully supportive of and conducive to the academic and personal growth of all California students — regardless of background. Whether the ELA is providing clarity on new laws so districts can adapt or litigating to reform existing law so that school districts can better serve students, it provides constant advocacy and critical information for its members."

— *Chris Ungar, Board Member, San Luis Coastal USD
and CSBA President*



education legal alliance steering committee



Chris Ungar, Chair

*CSBA President
San Luis Coastal USD*



Richard A. Carranza

*Former Superintendent
San Francisco County & USD*



Susan Henry, Vice Chair

*CSBA President-elect
Huntington Beach Union HSD*



Dr. Garry Eagles

*County Superintendent
Humboldt COE*



Vernon M. Billy

CSBA CEO & Executive Director



Michael Lin

*Superintendent
Corona-Norco USD*



Darryl R. Adams

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



Robert Miyashiro

*Vice President
Schools Services of California*



Leighton Anderson

*CSBA Delegate, Region 24
Whittier Union HSD*



Rosalina Rivera

*Superintendent
Delano Union ESD*



Peter Birdsall

CCSESA Executive Director



Paige Stauss

*Director, Region 4
Roseville Joint Union HSD*



education legal alliance  advisory committee



Mike Smith, Chair
Lozano Smith



Diana Halpenny
Dannis Woliver Kelley



Ronald Wenkart
Orange County Office of Education



Paul Loya
Atkinson, Andelson, Loya, Ruud & Romo



Spencer Covert
Parker & Covert LLP



Sue Ann Salmon Evans
Dannis Woliver Kelley



Peter K. Fagen
Fagen Friedman & Fulfroost LLP

education legal alliance  staff



Keith Bray
Director, ELA | General Counsel, CSBA



Anita Ceballos
Legal Specialist



Mike Ambrose
Staff Attorney



Mary Biehl
Administrative Specialist



Bode Owoyele
Staff Attorney

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 then CSBA President Jesús Holguín, the purpose of the "Adequacy Committee" was to:

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

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

"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 it a top priority to continue addressing the issue of adequate funding for California public schools."

— Jesús Holguín, CSBA Immediate Past President

The committee's final report, "California's Challenge — Adequately Funding Education in the 21st Century," which includes an updated estimate of the adequacy funding and opportunity gaps, was presented to the Delegate Assembly in December 2015 at CSBA's Annual Education Conference and released to the public in January of 2016. Copies of the report are available at www.csba.org/CAchallenge2015 or by contacting the Office of the General Counsel at legal@csba.org.



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:

In May 2010, the ELA and a broad coalition of students and their parents, the nine districts listed above, the Association of California School Administrators, and the California PTA filed this lawsuit to challenge the constitutionality of the State of California's school finance system. The plaintiffs argued that education is a fundamental right under the California Constitution and that since the State has chosen to implement this right by imposing a standards-based education program which requires what all schools must teach and what all students are expected to learn, it should establish a school finance system that provides all students an equal opportunity to meet those expectations.

"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 its fruition in defense of our schools and students."

— Jill Wynns, Board Member, San Francisco USD and CSBA Past President

In response, the State "demurred," which is a legal maneuver by 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.

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 appellate court found that the State is constitutionally bound to establish and fund a public education system that is free, but that it has no constitutional duty to provide its students with a quality education or to fund its schools at any particular level. The California Supreme Court voted against hearing *Robles-Wong* by a 4-3 margin, with jurists Ming W. Chin, Goodwin H. Liu and Mariano-Florentino Cuéllar in the minority. Liu authored a stinging dissent in which he wrote that, "it is regrettable that this court, having recognized education as a fundamental right in a landmark decision 45 years ago (*Serrano v. Priest* (1971) 5 Cal.3d 584), should now decline to address the substantive meaning of that right. The schoolchildren of California deserve to know whether their fundamental right to education is a paper promise or a real guarantee. I would grant the petition to review."



Proposition 98 Rebenching

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

Member(s) Involved:

None

Summary:

This lawsuit alleges that the State's failure to "rebench" the Proposition 98 minimum guarantee for the 2015-16 budget is an unconstitutional manipulation of the guarantee and sets a dangerous precedent that must be challenged. Proposition 98 was approved by voters in 1988 to ensure a guaranteed minimum

spending level each year for K-12 public schools and community colleges by providing them with a stable and predictable source of funding that grows with the economy and state General Fund revenues. State spending on childcare had always been included within the Proposition 98 minimum guarantee funding. In 2011, however, the State moved most of the funding for childcare outside of Proposition 98 for state budget purposes and adjusted or "rebenched" the minimum guarantee lower to reflect the removal. In the 2015-16 budget, the State added some childcare spending back into Proposition 98, used those funds to help meet the guarantee, but did not rebench the minimum guarantee calculation higher to reflect this additional education expense and thereby increase the guarantee. The court heard oral argument in June and requested additional briefing by the parties.

"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 Sacramento County Superior Court granted the Petition for Writ of Mandate on October 28, 2016, finding the State's failure to rebench inconsistent with the statutory scheme established to implement the constitutional provisions of Proposition 98.



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:

This mandate claim stems from the California Assessment of Student Performance and Progress (CAASPP) which was established by state law and regulations. The primary test in this assessment regime, the Smarter Balanced Assessment (SBA), involves many technical requirements for administering the test, including certain hardware and software specifications and minimum Internet connection speeds (20 Kbps per test taker).

Under the State constitution, “[w]henver the Legislature or any state agency mandates a new program or a higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service.” A requirement is considered a state mandate only if the requirement stems from the state legislature or a state agency — a requirement that stems from the U.S. Constitution, federal law, the state constitution, or the voters (via a statewide proposition) is not a state mandate. Additionally, a state mandate that is found to exist is not reimbursable when the state has already provided sufficient funds to cover the cost of the requirement.

While the state has appropriated some funding that districts can use to help meet the costs of the training and technological requirements for administering the SBA, these funds may be used for other expenditures and are not sufficient to meet existing needs for many districts. Moreover, these appropriations are one-time only funds whereas the SBA Consortium will require districts to regularly upgrade their technology, thereby imposing on-going costs. With the ELA’s support and guidance, Santa Ana USD, Plumas USD/COE, and Porterville USD filed a test claim with the Commission on State Mandates (CSM) challenging this unfunded mandate. Vallejo USD was later added as a test claimant.

After a series of hearings and unfavorable rulings, with the claimants each time refiling the claim and providing more evidence, CSM finally ruled in January 2016 that the training and technical requirements for the administration of CAASPP is a reimbursable state mandate.

Status/Outcome:

In March, the CSM approved parameters and guidelines on CAASPP claims and the State Controller released State Mandate Claiming Instructions in July.

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

— Michael Lin, Superintendent, Corona-Norco USD



Mandate Redetermination and Offsetting Revenues

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

Member(s) Involved:

Butte County 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 regarding mandate reimbursement by arguing that the scheme, as a whole, frustrates the right of reimbursement under the California Constitution. Districts and county offices of education are being required to provide services without a reasonable expectation of timely reimbursement. Plus, the procedures for reimbursement impose an unreasonable burden on the right to reimbursement. The 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 explicitly challenges 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 various new tactics that the State has devised to avoid reimbursing districts and county offices of education for their mandate claims. One particularly egregious tactic is to identify “offsetting revenues” as reimbursement for mandate claims. These offsetting revenues are revenues that districts and county offices of education would already receive; thus, districts receive no new or additional revenue under this tactic. The State has used offsetting revenues to avoid reimbursing districts and county offices of education for the Behavioral Intervention Plan and the High School Science Graduation Requirements mandates.

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

“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, Board Member, Butte County Board of Education and CSBA Vice President

Status/Outcome:

ELA appealed the Superior Courts ruling on CSBA’s behalf in June 2016 and the opening brief was filed in early October 2016.



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 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 50079 that parcel taxes must be structured as a flat rate per parcel, as was decided in *Borikas v. Alameda Unified School District*. In its demurrer, the District argued that the ballot measures were legal and, having been previously validated, 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 plaintiff's position, if upheld, would subject local parcel tax and bond measures to legal attack at any time rather than the current 60 day limit, when validation procedures are used by the public agency.

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:

The Court of Appeal affirmed the trial court's ruling and the plaintiff's petition for Supreme Court review was denied in February 2016.



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, the lawsuit alleged that the SBE failed to properly find that Aspire's program had a statewide benefit and included several procedural claims. The ELA was joined in this lawsuit by the following co-plaintiffs: the Association of California School Administrators, the California Teachers' Association, 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 and pursue chartering all of its schools at the local level. Aspire also will be ineligible to seek a statewide benefit charter for a five-year period. The SBE and Aspire agreed to pay the plaintiffs \$300,000 (\$150,000 each) in attorney fees and costs.

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

Status/Outcome:

CSBA and CTA are currently working with the attorneys representing the State Board of Education to resolve the remaining issue in the case.



Charter

Anderson Union HSD v. Shasta Secondary Home School (2015) Case No. C078491 - California Court of Appeal, Third District

Member(s) Involved:

Anderson Union High School District

Summary:

In this case, the Shasta Secondary Home School (SSHS), a charter school authorized by the Shasta Union School District, opened a nonclassroom-based charter school in the Anderson Union High School District (AUHSD). AUHSD brought suit alleging the location of the school violated the Charter Schools Act. The trial court ruled in favor of SSHS finding that the Charter Schools Act is silent as regards to locating a charter school in the same county but outside the boundary of the authorizing district.

ELA filed an amicus brief in December 2015, in support of AUHSD. Oral argument was heard in August 2016.

Status/Outcome:

The Third District Court of Appeal reversed the lower court's decision, finding that the geographic limitations imposed on charter schools by the Legislature in 2002 served to "clarify a district's sovereignty over public education within its boundaries" and that the "plain meaning" of the Charter Schools Act, as amended, "is that a charter school authorized by a school district is to be located and operated entirely within the geographic boundaries of the authorizing school district" unless an exception applies, such as where a nonclassroom-based charter school locates in an adjacent county.



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 certain key teacher employment statutes in the California Education Code including: (i) those governing tenure; (ii) the dismissal process; and (iii) teacher lay off. 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 to teach mostly poor and minority students.

The trial court in Los Angeles County ruled that the statutes were unconstitutional because they violated the equal protection clause in the California Constitution since the plaintiffs were denied their fundamental right to an education and since the statutes disproportionately impacted poor and minority students.

On appeal, and 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 offered the experience that school board members have with implementing the statutes, and described an alternative statutory scheme for tenure, dismissal and layoff that would be both constitutional and viable in light of the trial court’s ruling.

Status/Outcome:

The Court of Appeal reversed the trial court, holding that the statutes did not prevent the removal of ineffective teachers or cause ineffective teachers to be assigned to low performing schools, because those decisions were made by administrators acting at times in concert with bargaining agreements and district policies. The plaintiff’s petition for California Supreme Court review, which the ELA supported with an amicus letter, was denied.



California Unemployment Insurance Appeals Board (CUIAB)

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

Member(s) Involved:

San Francisco Unified School District

Summary:

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

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

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

Status/Outcome:

The union’s petition for review was granted in September 2016, and this case is now pending before the California Supreme Court.



Public Records Act (Legal bills subject to PRA)

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

Member(s) Involved:

None

Summary:

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

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

Status/Outcome:

Oral argument was heard in October 2016 and a decision is expected by the end of the year.



Public Records

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

Member(s) Involved:

None

Summary

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

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

Status/Outcome:

This case is fully briefed and oral argument is expected to be scheduled in December 2016.

"The ELA is an incredible partner for school districts, providing crucial guidance and resources that amplify our efforts locally. This support pays dividends in the courtroom, in the daily administration of our district and through our interaction with our constituents. Being a member of ELA vastly expands the range of services we can provide to our district and to its students, staff and families."

*—Bridget Cook, General Counsel, Antelope Valley Union HSD and
President-elect, California Council of School Attorneys*



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 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 asked the California Supreme Court to review the case and the ELA filed a letter opposing such a request.

Status/Outcome:

In March 2016, the California Supreme Court ordered that the Court of Appeal decision be published as it accords with the Supreme Court's recent decision in *Ardon v. City of Los Angeles*, where the Court found that inadvertent disclosure under the California Public Records Act does not waive privileged attorney-client information.



Special Education Services

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

Member(s) Involved:

Sonora Elementary School District
Tuolumne County Office of Education

Summary:

This case involves whether school districts and county offices or the California Department of Health Care Services (DHCS) should pay for certain special education services. In this case, the parents sued DHCS for unilaterally discontinuing physical and occupational therapy. DHCS then brought Tuolumne COE and Sonora ESD into the case. However, both Tuolumne COE and Sonora ESD settled with the parents and were dismissed from the case by

the administrative law judge (ALJ). DHCS continued with the case on its own and the ALJ ultimately ruled in favor of the parents and ordered that DHCS provide physical and occupational therapy to the student. Seeking to overturn the ALJ's ruling, DHCS then filed a writ of mandate in Superior Court and sought declaratory relief against Tuolumne COE and Sonora ESD, claiming/alleging that they were responsible for paying for the student's physical and occupational therapy. The Superior Court ruled against DHCS and it filed an appeal.

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

Status/Outcome:

Oral argument is scheduled for November 2016.

"Local school districts and county offices of education work day-in and day-out to provide a high quality education that prepares students for life and for work in the 21st Century. Yet, the environment and constraints in which we operate is shaped to a substantial degree by the laws of California. The ELA not only keeps districts and county offices apprised of legal developments and their policy implications, it works proactively to ensure that our interests are represented in the courts."

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



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 (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.

IDEA 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 on March 13, 2015 in support of the District.

Status/Outcome:

The Ninth Circuit ruled that the district had violated the IDEA and denied the student FAPE during the 2009-2010 and 2010-2011 school years, and remanded the case back to the district court for the determination of an appropriate remedy.



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 action 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 federal district court agreed. On appeal however, the Ninth Circuit held the District responsible rather than CDE. Though the student and the District were never on opposite sides, the student sought attorney fees from 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:

Oral argument was heard on August 1, 2016 and a decision is expected within three months to a year.



Special District Assessment

Manteca Unified School District v. Reclamation District No. 17 (2014) 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 in the Superior Court, relying on Water Code section 51200's explicit exemption of school districts from such assessments. RD 17, in turn, had argued that Water Code section 51200 was no longer valid in light of Proposition 218, which amended Section 4, Article XIII D of the California Constitution, to restrict the ability of local governments to exempt other local governments or agencies from such assessments. However, Prop. 218 also amended Section 1 of Article XIII D to state that it "does not give any agency new authority to assess a fee." The Superior Court ruled for the District, finding that the RD 17's reliance on Prop. 218 was misplaced in light of Section 1. RD 17 appealed and the ELA filed a brief in support of the District.

This issue has statewide importance because any district that owns property in an RD could be required to pay an RD assessment. If the RD 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 parties are awaiting oral argument.



Lease-Leaseback and Government Code section 1090

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

Member(s) Involved:

Mount Diablo Unified School District

Summary:

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

Status/Outcome:

The parties filed supplemental briefs in June 2016 due to the decision in *McGee v. Balfour Beatty Construction, LLC and Torrance USD* and currently await the scheduling of oral argument.



Lease-Leaseback and Government Code section 1090

McGee and California Taxpayers Action Network v. Balfour Beatty Construction, LLC and Torrance USD (2015) Case No. B262850 - California Court of Appeals, Second District

Member(s) Involved:

Torrance Unified School District

Summary:

This case addresses the same basic two questions as in *Davis v. Fresno USD*: (i) whether Government Code section 1090 applies to corporate consultants and (ii) whether the lease-leaseback agreement at issue in the case is valid. The ELA filed an amicus brief before the Court of Appeal in January 2016, in support of Torrance USD. ELA's brief focused solely on the second issue (lease-leaseback) and argued that *Davis* was wrongly decided and, in the alternative if *Davis* was correctly decided, that specific lease-leaseback agreement in this case was properly executed by the District. (This case is very similar to *California Taxpayers Action Network v. Tabor Construction, Inc. and Mt. Diablo USD*, with the difference being the specific components of the lease-leaseback agreement.)

Status/Outcome:

Appellate Court affirmed the judgment of the lower court on the lease-leaseback contracting, holding that the lease-leaseback agreement was properly executed as it was not subject to the competitive bidding statutes, but reversed the lower court on the Government Code Section 1090 conflict of interest claim. Holding that the conflict of interest requirements applicable to contracts also apply to independent contractors, the Court of Appeal remanded the issue back to the trial court for further proceedings. To ensure that the lease-leaseback holding could be cited as precedent in other related cases, ELA filed a Request for its Partial Publication and the entire opinion has been certified for publication.



Parent Trigger

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

Member(s) Involved:

Anaheim City School District

Summary:

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

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

Status/Outcome:

The parties await the scheduling of oral argument.



Probationary Employees

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

Member(s) Involved:

Orange County Department of Education

Summary:

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

Plaintiff argued that the LCFF legislation and new funding formula "vitiating" the basis for this sovereign immunity with its shift from state control to the local control of education funding. Thus, the 11th Amendment could no longer be used to protect the State or a subdivision of the State like Orange COE, or a school district, from being sued in federal court.

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

On April 29, 2016, ELA filed an amicus brief with the Ninth Circuit Court of Appeals to support the lower court's decision that the responsibility for funding public education in California primarily resides with the State and that the 11th Amendment bars a local agency like Orange COE from being sued in federal court.

Status/Outcome:

The case has been fully briefed and the parties await oral argument.



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