



# ANNUAL REPORT 2019



EDUCATION LEGAL ALLIANCE

**DEAR MEMBER:**

Since 1992, CSBA's Education Legal Alliance (ELA) has been the preeminent legal advocate for California's public schools. The ELA's commitment to protecting and promoting the interests of local educational agencies (LEAs) is unwavering and has once again proven to be critically important to school districts and county boards of education around the state.

In 2019, the ELA successfully challenged numerous legal threats to LEAs. This past year, the impact of the ELA is best represented by the settlement of a trio of ELA-initiated lawsuits that secured more than \$600 million in reimbursements to schools while preventing reductions to future allocations that would exceed \$700 million annually.

The first of these lawsuits, *CSBA v. Cohen*, was filed in 2015, and the other two — *CSBA v. Cohen II* and *CSBA v. Bosler* — were filed in 2018. Each case was initiated to stop the state from manipulating the Proposition 98 minimum funding guarantee in a manner that undercuts current and future funding to schools. The ELA's settlement of these cases will result in the repayment of \$686 million (approximately \$110 per pupil). As a part of the settlement agreement, schools are protected from automatic reductions to education funding in future years by up to 1 percent of the prior year's Proposition 98 minimum funding guarantee. By some estimates, that reduction could have reached \$745 million using 2017–18 funding levels and could have been greater in subsequent years.

Not content to rest on the laurels from this significant legal victory, the ELA kept up its aggressive efforts on other fronts. In *CSBA v. State of California*, the ELA is challenging statutes which, in effect, eliminate the state's constitutional obligation to reimburse LEAs for costs incurred for implementing state programs and activities. The lawsuit focuses on the practice of "redetermining" or reconsidering whether a mandate exists after an LEA has already implemented it and targets the state's act of identifying "offsetting revenues" in order to avoid providing additional funds to pay for mandates. The tactic of offsetting revenues involves the state's practice of identifying funds that LEAs already receive for other purposes as mandate payments rather than providing additional funding for mandates. The ELA successfully petitioned the California Supreme Court for a review of an unfavorable appellate court decision, and a decision is currently pending.

The ELA continues to have a significant impact in the courts in California on behalf of CSBA members. If the work of the ELA tells us anything, it is that smart, determined and persistent legal advocacy can make a difference in strengthening public schools and producing the conditions for improved student outcomes. Thank you for your continued support for the ELA and its ongoing role as the legal defender of California's public schools.

If you have any question about the ELA or its benefits, please contact ELA staff at (800) 266-3382 or [legal@csba.org](mailto:legal@csba.org).

Sincerely,



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

# CONTENTS

What is the Education Legal Alliance? . . . . .	5
Steering Committee . . . . .	6
Advisory Committee . . . . .	7
Staff . . . . .	7

## CURRENT ACTIVITIES

» Proposition 98 Rebenching . . . . .	10
» Education Minimum Funding Guarantee . . . . .	11
» Proposition 98 Certifications . . . . .	12
» Mandate Redetermination and Offsetting Revenues. . . . .	13
» California Unemployment Insurance Appeals Board (CUIAB) . . . . .	14
» Developer Fees . . . . .	15
» Deferred Action for Childhood Arrivals (DACA) . . . . .	16
» State Board of Education Charter Appeal Process . . . . .	17
» Special Education — Educational Residential Placement. . . . .	18
» Developer Fees . . . . .	19
» Disruptive Parent Letters . . . . .	20
» FPPC Regulation . . . . .	21
» District Regulations Requiring the Presentation of a Tort Claim under Gov. Code Sec. 935 . . . . .	22
» Discrimination Under Americans with Disabilities Act . . . . .	23
» California Public Records Act . . . . .	24
» Special Education . . . . .	25
» Special Education . . . . .	26
» Charter School Renewal. . . . .	27

# MEMBERS WITH WHOM THE ELA WORKED WITH IN 2019



*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.

“At a time when our public education system is grappling with rising costs and inadequate funding, CSBA's Education Legal Alliance has delivered a major victory for the state's 6.2 million public school students. The settlement of the *Cohen* and *Bosler* cases restores hundreds of millions of dollars that the State owed public schools, and protects billions of dollars in future Proposition 98 funds that governing boards will need to provide each and every student with the 21<sup>st</sup>-century education they deserve.”

— **Emma Turner**, CSBA President and trustee, La Mesa-Spring Valley SD

### 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.



## STEERING COMMITTEE



**Emma Turner, Chair**  
*CSBA President  
 La Mesa-Spring Valley SD*



**Alisa MacAvoy**  
*Director, Region 5  
 Redwood City ESD*



**Xilonin Cruz-Gonzalez, Vice Chair**  
*CSBA President-elect  
 Azusa USD*



**Paul Gothold**  
*County Superintendent  
 San Diego COE*



**Vernon M. Billy**  
*CSBA CEO & Executive Director*



**Mary Jane Burke**  
*County Superintendent  
 Marin COE*



**Leighton Anderson**  
*CSBA Delegate, Region 24  
 Whittier Union HSD*



**Dr. Kirk Nicholas**  
*Superintendent  
 Lammersville Joint USD*



**Robert Manwaring**  
*Consultant*



**Rosalina Rivera**  
*Superintendent  
 Delano Union ESD*



**Dr. Michael Lin**  
*Superintendent  
 Corona-Norco USD*



**Timothy Taylor**  
*County Superintendent  
 Butte COE*

## ADVISORY COMMITTEE



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



**Spencer Covert**  
*Parker & Covert LLP*



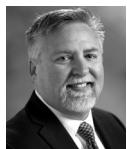
**Sue Ann Salmon Evans**  
*Dannis Woliver Kelley*



**Peter K. Fagen**  
*Fagen Friedman & Fulfrost LLP*



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



**Jeffrey Riel**  
*Orange County  
Department of Education*



**Teresa Stinson**  
*Sacramento County  
Office of Education*

## STAFF



**Kathryn Meola**  
*CSBA  
General Counsel,  
Director of ELA*



**Elaine Yama-Garcia**  
*CSBA  
Deputy General Counsel*



**Mike Ambrose**  
*CSBA  
Associate General Counsel*



**Bode Owoyele**  
*CSBA  
Associate General Counsel*



**Anita Ceballos**  
*CSBA  
Legal Specialist*

# CURRENT ACTIVITIES

"CSBA's Education Legal Alliance continues to be the state's premier advocate for the defense of public education and for the advancement of school districts and county offices of education. The ELA demonstrates that ELA is a powerful tool that local educational agencies can use to create the conditions for improved student outcomes. From liability and litigation costs to developer fees to charter school issues, ELA protected the interests of public schools in myriad ways this year."

— **Xilonin Cruz-Gonzalez**, CSBA President-elect  
and trustee, Azusa USD



EDUCATION LEGAL ALLIANCE





## PROPOSITION 98 REBENCHING

CSBA v. Cohen (2015) Case No. C083923 — California Court of Appeal, Third District **UPDATE**

**MEMBER(S) INVOLVED:** On behalf of all California School Districts and County Offices of Education

### IMPORTANCE OF STATEWIDE ISSUE:

While CSBA is in full support of the State's spending on childcare and wraparound services, the State's manipulation of the formula to use childcare spending effectively lowered the amount of guaranteed money public education received under Proposition 98 (Prop 98), and if left unchecked, created an avenue for the State to lower funding in other years by moving expenses into Proposition 98 without rebenching the minimum guarantee. This case and the Superior Court's written decision in favor of CSBA's position are important precedent to ensure the Proposition 98 formula continues to fulfill its purpose and promise.

### SUMMARY OF THE CASE:

This lawsuit alleges that the State's failure to "rebench" the Prop 98 minimum guarantee for the 2015–16 budget is an unconstitutional manipulation of the guarantee and sets a dangerous precedent that must be challenged. Prop 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 Prop 98 minimum guarantee funding. In 2011, however, the State moved most of the funding for childcare outside of Prop 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 Prop 98, used those funds to help meet the guarantee, but did not rebench the minimum guarantee calculation higher to reflect this additional education expense.

In October 2016, the Sacramento County Superior Court granted CSBA's Petition for Writ of Mandate, finding the State's failure to rebench the minimum guarantee was inconsistent with the statutory scheme established to implement the constitutional provisions of Prop 98. The state appealed on January 6, 2017.

### CURRENT STATUS AND/OR OUTCOME:

In a settlement reached between CSBA and the State that includes the State's dismissal of its appeal in this case, California's public schools will receive hundreds of millions of dollars in additional funding and avoid billions in potential losses. The agreement ensures public schools will receive repayment of \$686 million (approximately \$110 per student) due to prior year underpayments. It also contains provisions that would prevent the State from taking up to 1 percent of the Prop 98 guarantee (\$756 million in 2017–18 and potentially more in future years) as part of the annual certification process.

## EDUCATION MINIMUM FUNDING GUARANTEE

CSBA v. Cohen (2018) Case No. 34-2018-80002950 — Sacramento County Superior Court **UPDATE**

**MEMBER(S) INVOLVED:** On behalf of all California School Districts and County Offices of Education

### IMPORTANCE OF STATEWIDE ISSUE:

The State's accounting change set forth in the challenged provisions ("cost allocation schedule") would allow the State to provide less than the constitutionally obligated minimum funding guarantee in future years.

### SUMMARY OF THE CASE:

On June 27, 2018, the State enacted Assembly Bill 1825 (AB 1825), a budget trailer bill focused on education finance, which created a new certification process for making a final determination of the Proposition 98 (Prop 98) minimum guaranteed funding for each fiscal year. The new certification process was referred to as the "cost allocation schedule." As part of the new certification process, new Education Code section 41206.03 gave the State the authority to provide for an indefinite repayment period for any Prop 98 shortfall (or underpayment) in years where it is determined that the State has failed to appropriate the minimum amount required by the Constitution. In August 2018, CSBA and its ELA filed a lawsuit challenging the new certification scheme.

The lawsuit specifically challenges provisions of AB 1825 that would change how the Prop 98 minimum education funding guarantee is calculated. Under AB 1825, the State will be able to provide K-14 schools with less money than they would otherwise legally receive.

AB 1825 would allow the State to reduce education funding in future years by up to 1 percent of the prior year's Prop 98 guarantee, meaning that ongoing school funding could have been lowered in future years by hundreds of millions of dollars.

### CURRENT STATUS AND/OR OUTCOME:

In a settlement reached between CSBA and the State that includes resolution of the claims in this case, the State has agreed to remove the cost-allocation schedule, and that California's public schools will receive hundreds of millions of dollars in additional funding and avoid billions in potential losses. The agreement ensures public schools will receive repayment of \$686 million (approximately \$110 per student) due to prior year underpayments. It also contains provisions that would prevent the State from taking up to 1 percent of the Prop 98 guarantee (\$756 million in 2017–18 and potentially more in future years) as part of the annual certification process.



## PROPOSITION 98 CERTIFICATIONS

CSBA v. Bosler (2018) Case No. 34-2018-80003029 — Sacramento County Superior Court **NEW**

**MEMBER(S) INVOLVED:** On behalf of all California School Districts and County Offices of Education

### IMPORTANCE OF STATEWIDE ISSUE:

K-12 funding is crucial for student success, and California continues to rank near the bottom in nearly every significant measure of school funding and school staffing. It is critical that the State fund schools at the Constitutionally required amount.

### SUMMARY OF THE CASE:

On June 27, 2018, the State enacted Assembly Bill 1825 (AB 1825), a budget trailer bill focused on education finance, which created a new certification process for making a final determination of the Proposition 98 (Prop 98) minimum guaranteed funding for each fiscal year. As part of the new certification process, new Education Code section 41206.03 gave the State the authority to provide for an indefinite repayment period for any Prop 98 shortfall (or underpayment) in years where it is determined that the State has failed to appropriate the minimum amount required by the Constitution. CSBA challenged the new certification scheme in AB 1825 in *CSBA v. Cohen*.

On September 13, 2018, the Department of Finance published its final certifications for fiscal years 2009–10 through 2016–17, in accordance with the new provisions allowed by the cost allocation schedule. Those certifications demonstrate that there is a substantial outstanding balance in the amount owed to schools because of prior underpayments. Although the 2016–17 certification reflects that the State owes approximately \$686 million in previous underpayments, or “settle-up” obligations, there is no provision for payment as would have been required under the previous system; the certifications instead state that “[p]ayments for settle-up balances will be included in a multi-year payment schedule in the 2019–20 Governor’s Budget.”

Because the certifications indicate that the State intends to schedule repayment of that balance over time rather than paying it off immediately as constitutionally required, this case challenges those certifications.

### CURRENT STATUS AND/OR OUTCOME:

In a settlement reached between CSBA and the State that includes resolution of the claims in this case, California’s public schools will receive hundreds of millions of dollars in additional funding and avoid billions in potential losses. The agreement ensures public schools will receive repayment of \$686 million (approximately \$110 per student) due to prior year underpayments. It also contains provisions that would prevent the State from taking up to 1 percent of the Prop 98 guarantee (\$756 million in 2017-18 and potentially more in future years) as part of the annual certification process.

## MANDATE REDETERMINATION AND OFFSETTING REVENUES

CSBA v. State of California (2013) Case No. S247266 — California Supreme Court **UPDATE**

**MEMBER(S) INVOLVED:** Butte County Office of Education; Castro Valley Unified School District; San Diego Unified School District; San Joaquin County Office of Education

### IMPORTANCE OF STATEWIDE ISSUE:

The mandate requirement in the California Constitution requires the State to pay for any programs that it imposes on local governments, including school districts. Districts rely on this reimbursement, and the obligation to pay for mandated programs helps keep a check on state programs mandated on local governments. Ensuring appropriate reimbursement of state mandates is important for school districts with limited budgets.

### SUMMARY OF THE CASE:

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. This lawsuit explicitly challenges the statutes which allow the State to eliminate the reimbursement obligation 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 Requirement 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. ELA appealed the superior court’s ruling on CSBA’s behalf in June 2016.

### CURRENT STATUS AND/OR OUTCOME:

After the court of appeal largely upheld the superior court’s ruling and subsequently denied CSBA’s Petition for Rehearing, the California Supreme Court granted CSBA’s Petition for Review. Amicus letters were filed in support of CSBA’s Petition for Review by Clovis USD, Corcoran USD, Culver City USD, East Side Union HSD, El Monte Union HSD, Elk Grove USD, Kern HSD, Lassen COE, San Juan USD, California State Association of Counties, League of California Cities, and School Innovations & Achievement. The California Supreme Court heard oral argument on October 2, 2019 and the parties await the Court’s decision.



## CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD (CUIAB)

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

**MEMBER(S) INVOLVED:** San Francisco Unified School District

### IMPORTANCE OF STATEWIDE ISSUE:

California sits near the bottom nationally in nearly every significant measure of school funding. Paying for unemployment benefits over the summer would present a large financial burden to school districts.

### SUMMARY OF THE CASE:

This case involves the interpretation of California Unemployment Insurance Code section 1253.3, which states 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 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 California Unemployment Insurance Administrative Board 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.”

### CURRENT STATUS AND/OR OUTCOME:

The union’s petition for review was granted by the California Supreme Court in September 2016. ELA filed its amicus brief on April 24, 2017. Oral argument is currently set for November 6, 2019.

## DEVELOPER FEES

*Summerhill Winchester, LLC v. Campbell Union School District* (2017) Case No. H043253 — California Court of Appeal, Sixth District **UPDATE**

**MEMBER(S) INVOLVED:** Campbell Union School District

### IMPORTANCE OF STATEWIDE ISSUE:

Developer fees help pay for the construction of school facilities necessitated by student population increases that result from new local development. This case has the potential to put additional restrictions on districts' attempts to assess Level 1 fees, creating unnecessary burdens for districts and potentially limiting their ability to assess fees on new developments.

### SUMMARY OF THE CASE:

In this case, the trial court ordered Campbell Union School District to refund the \$499,967.96 in fees paid by the developer of a condominium project in the district, including \$101,403.21 in interest. The trial court found that: (1) the fee study's statement that "in excess of" 133 homes were anticipated to be built was not an adequate methodology to describe the total amount of new housing needed, (2) the fee study's estimate that the number of students to be generated by the development was "in excess of" 67 students was not adequate methodology to estimate the number of students generated by the new development, and (3) the fee study did not adequately calculate the costs to house new students generated by the development because the costs were not based on actual construction plans for new school facilities. The District argued that the trial court's decision is contrary to existing case law with respect to the use of projections for housing units expected, students generated, and estimates of facilities costs.

The ELA filed an amicus brief in support of the district on June 26, 2017.

### CURRENT STATUS AND/OR OUTCOME:

On December 4, 2018, the appellate court concluded that the district's fee study did not contain the data required to properly calculate a development fee, and affirmed the trial court's judgment in favor of the developer.



## DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

*University of California v. U.S. Department of Homeland Security* (and related cases) (2017) Case No. 17-cv-05211-WHA — Federal District Court, Northern District **UPDATE**

### MEMBER(S) INVOLVED:

On behalf of all California School Districts and County Offices of Education

### IMPORTANCE OF STATEWIDE ISSUE:

Public schools in California and across the country are obligated to educate any and all students who enroll, regardless of immigration status. It has been reported that the uncertainty over the status of Deferred Action for Childhood Arrivals (DACA) has created a “chilling effect” and discouraged some undocumented students from attending schools. Diminished attendance jeopardizes the ability of schools to prepare all students for the demands of the 21st century and success in college, career and civic life. Additionally, ending DACA would exacerbate teacher shortages throughout the state, and would negatively affect the educational opportunities of students throughout California.

### SUMMARY OF THE CASE:

Four lawsuits challenging the rescission of DACA are proceeding together in the Northern District of California. The DACA program was implemented in 2012 and offered work authorization and a renewable two-year reprieve from deportation to unauthorized immigrants who were brought to the United States as children and met specific eligibility requirements. The Trump Administration announced in September 2017 that it will end the DACA program. At the time of filing, there were approximately 222,795 DACA recipients in California, more than a quarter of the program’s nationwide total. At the time of the amicus brief, one-third of all DACA recipients were enrolled in high school, one-fifth were enrolled in college, and overall one-fourth were enrolled in college and working at the same time. According to the Migration Policy Institute, approximately 5,000 teachers in California are DACA recipients. CSBA and the ELA were asked to sign onto an amicus brief in the consolidated DACA lawsuits identifying the challenges the rescission of DACA may create for students, schools, and governing boards in California. On November 1, 2017, an amicus brief was filed on behalf of CSBA along with NEA, ACSA, CTA, Berkeley USD, Moreno Valley USD, San Diego USD, West Contra Costa USD, Los Angeles County Board of Education, Los Angeles USD, Oakland USD, Sacramento City USD, and other associations. In January 2018, the district court issued an injunction blocking the implementation of the Trump Administration’s decision, which prompted the Administration to petition the U.S. Supreme Court to bypass the appellate court and directly review the granting of the injunction.

### CURRENT STATUS AND/OR OUTCOME:

CSBA/ELA joined an amicus brief filed before the U.S. Court of Appeals for the Ninth Circuit on March 20, 2018. On November 8, 2018, the Ninth Circuit upheld a federal district court’s order requiring the government to keep the DACA program in place. The case is now before the U.S. Supreme Court, which will hear oral argument on November 12, 2019.

## STATE BOARD OF EDUCATION CHARTER APPEAL PROCESS

*CSBA/ELA and San Jose USD v. State Board of Education (Promise Academy) (2018) Case No. C087996 — California Court of Appeal, Third District* **UPDATE**

**MEMBER(S) INVOLVED:** San Jose Unified School District

### IMPORTANCE OF STATEWIDE ISSUE:

If the State Board of Education (SBE) is allowed to exceed the scope of its authority and implement significant changes to a charter school petition that was denied by the school district and county office of education, the charter appeal process cannot work as intended. School district authorizers work to ensure charter school petitions meet the necessary requirements and will provide a quality education to the students in their district. Allowing the SBE to approve a charter petition with significant material revisions weakens local educational agency authority and undermines the structure of the charter petition process.

### SUMMARY OF THE CASE:

After a charter petition was denied by San Jose USD and not approved by the Santa Clara County Board of Education, the SBE approved the petition on appeal. The petition approved by SBE was materially different from the petition submitted to the district and the Santa Clara County Board. This is beyond the appeal process contemplated by the Charter Schools Act. Nothing in the statute or the regulations authorizes the SBE to make material revisions to the charter document in order to approve — or deny — the charter petition on appeal. SBE is limited to consideration of a renewal petition as denied by the governing boards. In this case, SBE approved the charter petition in a materially different form from the petition that was presented to the district.

CSBA, its ELA, and San Jose USD filed a Writ of Mandate and Complaint with the Sacramento County Superior Court in March 2018. After conducting a hearing in June, the Superior Court denied CSBA/ELA's Petition for Writ of Mandate, finding that Education Code section 47605 contained express language that the "establishment of charter schools should be encouraged." The court ruled that SBE did not violate the law by modifying the charter petition as part of its approval of the Promise Academy charter school.

### CURRENT STATUS AND/OR OUTCOME:

CSBA/ELA and San Jose USD filed an appeal of the decision on September 27, 2018. Board members should note that Assembly Bill 1505, which was signed in 2019 and goes into effect July 1, 2020, will limit the scope of appellate review of charter petitions by the SBE.





## SPECIAL EDUCATION — EDUCATIONAL RESIDENTIAL PLACEMENT

*M.S. v. Los Angeles Unified School District* (2016) Case No. 16-56472 — Federal Court of Appeals, Ninth Circuit

**UPDATE**

**MEMBER(S) INVOLVED:** Los Angeles Unified School District

### IMPORTANCE OF STATEWIDE ISSUE:

School districts must provide a free appropriate public education (FAPE) to eligible students, and this case provides an opportunity to clarify the scope of what must be included in an Individualized Education Program (IEP) when other government agencies are providing related services to the student as well. Clarity of the obligations of school districts is crucial for schools to comprehensively, efficiently, and effectively provide a FAPE to a student.

### SUMMARY OF THE CASE:

This case involves the determination of the obligations of a school district related to a special education student placed in a residential facility.

After several years of being placed in a court ordered residential facility funded by the Los Angeles County Department of Children and Family Services (DCFS), and provided educational services under an IEP established by Los Angeles USD, the student (M.S.) challenged the IEP and filed a due process complaint alleging that the district denied her a FAPE by failing to discuss the need for or offer her a residential placement for educational purposes. At the Office of Administrative Hearings (OAH) hearing, the Administrative Law Judge (ALJ) concluded that the district had no obligation to offer an educational residential placement in the IEP when M.S. was already receiving an appropriate residential placement through DCFS.

On appeal, the federal district court found that the district had a separate and independent obligation to consider whether M.S. needed a residential placement for educational reasons.

Los Angeles USD appealed the district court decision to the U.S Court of Appeals for the Ninth Circuit. The ELA filed an amicus brief on May 7, 2018, in support of the district's position that it has no obligation to offer an educational residential placement in the IEP when a student is already receiving an appropriate residential placement through the County.

### CURRENT STATUS AND/OR OUTCOME:

The Ninth Circuit ruled against the district, finding that even though the student had already been placed in a residential facility by DCFS, LAUSD had failed to provide the student with a FAPE by predetermining the student's placement when it failed to consider whether the student may need residential placement as part of her IEP.

## DEVELOPER FEES

*Salinas Union High School District v. Tanimura & Antle Fresh Food, Inc.* (2017) Case No. H045470 — California Court of Appeal, Sixth District **UPDATE**

**MEMBER(S) INVOLVED:** Salinas Union High School District

### IMPORTANCE OF STATEWIDE ISSUE:

Developer fees help pay for the construction of school facilities necessitated by student population increases that result from new local development. Allowing developers to create subtypes of construction that are not subject to developer fees would create funding challenges for school districts and circumvent the important existing developer fee processes.

### SUMMARY OF THE CASE:

Salinas Union HSD appealed a superior court ruling that the builder of an agricultural housing project was not required to pay the Level 2 residential developer fees to the school district because the housing project was determined by the county board to be for adults only and would therefore not impact the school district. As framed by the superior court, the question is whether the school district may properly impose Level 2 developer fees on a project when that project will only house adults, the occupation of the housing project by dependents is prohibited by the terms of the County's approval, and the School Facility Needs Assessment does not address the fact that the project is meant for adults only. The district, on the other hand, framed the question as whether a developer can avoid paying school impact fees by professing an intention to exclude families from a new residential development, even if the exclusion of families is potentially discriminatory and illegal. If allowed to stand, there is concern the trial court's ruling may encourage residential developers around the state to bar or limit access to families and could impact school districts' ability to impose fees on projects that developers argue will generate fewer than average students. On June 18, 2018, the ELA filed an amicus brief in support of the district's assessment of Level 2 developer fees on a new housing development within the district's boundaries.

### CURRENT STATUS AND/OR OUTCOME:

The Court of Appeal found in favor of the district, and cited to the ELA's brief in its decision, concluding that the developer fee statutory scheme does not require separate analysis of "subtypes" of residential development that are not included in the statute, and the district's needs analysis adequately determined a reasonable relationship between the Level 2 fee's use, the need for school facilities, and new residential development.



## DISRUPTIVE PARENT LETTERS

*Camfield v. Redondo Beach Unified School District* (2017) Case No. 17-56072 — Federal Court of Appeals, Ninth Circuit **UPDATE**

**MEMBER(S) INVOLVED:** Redondo Beach Unified School District

### IMPORTANCE OF STATEWIDE ISSUE:

It is important for districts to have tools available to maintain a safe and non-disruptive learning environment at its schools, including in some circumstances restricting a parent's right to access the school campus without prior permission.

### SUMMARY OF THE CASE:

This case poses the question of whether a school can restrict parent access to campus through a disruptive parent letter, without giving parents more formalized and expanded due process rights before the restriction may be imposed. In this case, a mother and father were sent "disruptive parent letters" limiting their access to the school campus without prior permission from the principal. The parents had gotten in arguments with other parents at the school, swore at staff when upset about their student's placement with a certain teacher, swore at the principal, and made staff/teachers uncomfortable. Once their children matriculated from the school, the parents sued, alleging a number of violations, including disability discrimination under Section 504 and the Americans with Disabilities Act (ADA); violation of parental rights under Education Code, section 51101; violations of the constitutional rights to free speech, due process, and equal protection; and violation of the Bane Act, Civil Code, section 52.1. The district court dismissed many of the claims and ruled on summary judgement in favor of the school district on the remaining issues. The parents have appealed to the Ninth Circuit Court of Appeals.

The ELA filed an amicus brief on July 5, 2018, supporting the district's ability to use a "disruptive parent letter" to limit campus access in order to keep a safe and non-disruptive learning environment at the school, without providing more formalized and expanded due process rights.

### CURRENT STATUS AND/OR OUTCOME:

On May 17, 2019, the U.S. Court of Appeal for the Ninth Circuit found in favor of the district, affirming the district court's dismissal of plaintiff's claims.

"The Education Legal Alliance's staunch defense of California's public schools is needed more now than ever before. A combination of constantly changing standards, skyrocketing costs and unfunded mandates have complicated the task of educating today's students and maintaining the stability needed for future generations. Thankfully, the ELA and its premier affiliate firms are there at every turn, making the case — and typically winning it — for school districts, colleges and county offices of education across California."

— **Tony De Marco**, President-elect of the California Council of School Attorneys and Partner, Atkinson, Andelson, Loya, Ruud & Romo

## FPPC REGULATION

*California State Association of Counties & CSBA v. Fair Political Practices Commission (FPPC) (2018) Case No. BS174653* — Los Angeles County Superior Court **UPDATE**

**MEMBER(S) INVOLVED:** On behalf of all California School Districts and County Offices of Education

### IMPORTANCE OF STATEWIDE ISSUE:

Enforcement of certain regulations by the California Fair Political Practices Commission (FPPC) will impact school boards as they consider whether to place measures on their local ballots and provide informational communications about the measures. As communication methods change for public agencies, it is important to ensure that school districts can continue to provide information about important ballot measures to the community.

### SUMMARY OF THE CASE:

CSBA and its ELA have teamed up with the California State Association of Counties (CSAC) to sue the Fair Political Practices Commission (FPPC), the agency responsible for the enforcement of the Political Reform Act (PRA), which regulates campaign financing, conflicts of interest, lobbying, and government ethics. The lawsuit challenges the FPPC's adoption and enforcement of regulations which exceed the Commission's authority. Local governments cannot spend public funds to engage in campaign communications that expressly advocate for or against a ballot measure, but can spend public funds to inform and educate the public about an upcoming ballot measure. FPPC Regulation section 18420.1 was implemented after the *Vargas v. City of Salinas* case in 2009, and makes television, electronic media, and radio spots per se violations of the prohibition on spending public dollars on advocacy, regardless of whether the communication is strictly informational. CSBA attempted to get the FPPC to rescind the regulation by sending an opposition letter to FPPC in 2009 and formally petitioning for rulemaking in 2010. CSBA was poised to seek redress in the courts but refrained when the then FPPC Chair indicated that FPPC staff would not include the regulation in its enforcement efforts. Unfortunately, the FPPC has changed course and has recently begun enforcing the regulations, impacting how school boards or county offices of education place measures on their local ballots and provide informational communications about the measures.

CSAC and CSBA/ELA filed a lawsuit on August 3, 2018, challenging the FPPC regulation regarding such campaign activity being banned regardless of the content of the message.

### CURRENT STATUS AND/OR OUTCOME:

Parties are in the early stages of briefing the case.



## DISTRICT REGULATIONS REQUIRING THE PRESENTATION OF A TORT CLAIM UNDER GOV. CODE SEC. 935

*Big Oak Flat-Groveland Unified School District v. Superior Court of CA, County of Tuolumne Case No. F074265*  
— California Court of Appeal, Fifth District **UPDATE**

**MEMBER(S) INVOLVED:** Big Oak Flat-Groveland Unified School District

### IMPORTANCE OF STATEWIDE ISSUE:

Prior to Senate Bill 1053 (SB 1053) being implemented in 2018, school districts could craft local claim presentation requirements under Government Code section 935 that required claimants to timely submit a claim to the district before initiating a lawsuit for a number of claims, including for claims of sexual abuse. SB 1053 revised section 935 to exclude claims of sexual abuse from the Claims Act requirements. As districts have relied on the Claims Act to ensure timely notice of claims and allow governing boards to settle meritorious disputes without incurring significant litigation costs, the ELA has submitted amicus briefs to protect the authority originally granted to local public entities under section 935.

### SUMMARY OF THE CASE:

This case involves the proper application of Government Code section 935 to claims for recovery of damages. In 2015, a student filed a lawsuit against Big Oak Flat-Groveland USD for damages related to sexual abuse by a teacher. The district filed a demurrer (a formal objection challenging the plaintiff's complaint), arguing that the plaintiff did not comply with the Government Claims Act because they failed to present a claim to the district prior to bringing the litigation, as required by the district's board policies. The Claims Act exists to provide public entities with sufficient information to enable them to adequately investigate claims, settle claims when appropriate without expensive litigation, and to budget for potential lawsuits with limited public dollars.

The trial court ruled against the school district, and the court of appeal subsequently overturned the trial court's ruling in 2018, holding that the plaintiff must comply with the procedures set forth by the district pursuant to the Claims Act. The Supreme Court granted review, but then subsequently remanded the case back to the appellate court to reconsider the matter in light of the recent enactment of SB 1053 (providing that the procedures prescribed by Gov Code 935 do not apply to claims of childhood sexual abuse made as described in Gov Code 905(m)). ELA has filed amicus briefs in the case in support of the district.

### CURRENT STATUS AND/OR OUTCOME:

In 2019, the Supreme Court asked the parties and the appellate court to address statutory interpretation and intent in evaluating whether SB 1053 applies to this case. The appellate court will schedule oral argument and take the matter under submission for decision.

## DISCRIMINATION UNDER AMERICANS WITH DISABILITIES ACT

*A.L. v. Clovis Unified School District* Case No. 18-16669 — Federal Court of Appeals, Ninth Circuit **NEW**

**MEMBER(S) INVOLVED:** Clovis Unified School District

### IMPORTANCE OF STATEWIDE ISSUE:

If school districts cannot assert failure to exhaust administrative remedies in a motion to dismiss, then the district would have to bring up the issue as a motion for summary judgment, meaning that resolution of the case will be significantly delayed and the district would be required to undergo unrelated discovery procedures, spending additional resources on legal fees.

### SUMMARY OF THE CASE:

In this case, a special education student filed claims of discrimination under the Americans with Disabilities Act (ADA), Section 504, and denial of free appropriate public education (FAPE), among others. The plaintiff alleged that the school district discriminated against her when it “unnecessarily segregated” her, causing injuries she sustained in the restrictive placement that denied her the full benefit of the district’s programs and services. The student also claimed that the district discriminated against her when it failed to respond to her parent’s request for accommodations, and that she suffered physical and emotional harm as a result of the district’s negligent hiring, supervision and training of employees.

The district successfully prevailed on a motion to dismiss the case at the district court level, on the basis that student did not exhaust her administrative remedies under the Individuals with Disabilities Education Act (IDEA). The court agreed with the district, finding that the substance of plaintiff’s complaint was a denial of FAPE which overlaps with IDEA, and that plaintiff was therefore required to exhaust her administrative remedies under IDEA. The plaintiff subsequently filed a due process case with the Office of Administrative Hearings (OAH) alleging failure to provide a FAPE. The due process case was eventually settled with the district. Plaintiff has appealed the trial court’s ruling on the motion to dismiss, arguing that a motion to dismiss is not the proper avenue for a failure to exhaust administrative remedies argument, and further claimed that she did exhaust her administrative remedies, despite the settlement of her due process case.

On February 20, 2019, the ELA filed an amicus brief in the 9th Circuit in support of the district, providing support for the arguments that the failure to exhaust IDEA administrative remedies is appropriate grounds for a motion to dismiss, and that settling a special education due process complaint before the OAH does not constitute exhaustion of IDEA administrative remedies because there was no chance for an Administrative Law Judge to make findings of fact.

### CURRENT STATUS AND/OR OUTCOME:

This case is being considered for an upcoming oral argument in front of the 9th District Court of Appeals in early 2020.



## CALIFORNIA PUBLIC RECORDS ACT

*National Lawyers Guild v. City of Hayward* Case No. S252445 — California Supreme Court **NEW**

**MEMBER(S) INVOLVED:** On behalf of all California School Districts and County Offices of Education

### IMPORTANCE OF STATEWIDE ISSUE:

School districts and county offices of education can incur significant costs responding to California Public Record Act (CPRA) requests and are likely to continue to face additional costs in redacting student and personnel information in various formats to respond to CPRA requests. A Supreme Court ruling on a public agency's ability to recover some of these costs could alleviate some of the burden for school districts and county offices throughout the state.

### SUMMARY OF THE CASE:

In this case, the National Lawyers Guild (Guild) requested various public records from the City of Hayward, including hours of police body camera video. The City provided responsive documents and video and sought reimbursement for the costs incurred to acquire and employ a special computer software program to redact portions of body camera video recordings that were exempt from disclosure. The case raised questions over what costs are recoverable by a public agency under Gov't Code section 6253.9(b)(2), which states that a California Public Records Act (CPRA) requester bears the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when the request would require data compilation, extraction, or programming to produce the record. The Guild argued the City could only recover the direct cost of duplicating the records, while the City argued that it should be able to recover the cost of taking exempt material out of a digital video file in order to allow a record to be produced. The trial court ruled in favor of the Guild.

The Court of Appeal ruled in favor of the City, overturning the trial court's ruling and finding "based on the language of the statute, the legislative history, and policy considerations that the costs allowable under section 6253.9, subdivision (b)(2) include the City's actual expenditures to produce a copy of the police body camera video recordings, including the cost of extracting exempt material from these video records with the aid of special computer programming."

The ELA filed an amicus brief with the California Supreme Court in support of the Court of Appeal's ruling on May 31, 2019, focusing on the burden school districts can face under CPRA requests.

### CURRENT STATUS AND/OR OUTCOME:

The case is fully briefed and the parties await the scheduling of oral argument in front of the California Supreme Court.

## SPECIAL EDUCATION

*A.W. v. Tehachapi Unified School District* Case No. 19-15680 — Federal Court of Appeals, Ninth Circuit **NEW**

**MEMBER(S) INVOLVED:** Tehachapi Unified School District

**IMPORTANCE OF STATEWIDE ISSUE:**

Requiring a school district to initiate a due process hearing when it believes it is providing a full appropriate public education (FAPE), but the student's parent disagrees, could lead to significant additional legal costs and burdens on school districts.

**SUMMARY OF THE CASE:**

In 2015, the Office of Administrative Hearings (OAH) issued a decision that Tehachapi USD had denied plaintiff A.W. a FAPE, and required the district to adopt an interim behavior plan and provide a one-to-one aide with supervision by a Board-Certified Behavior Analyst (BCBA) for two hours per week until the student's next Individualized Education Program (IEP) meeting.

This case rises out of the plaintiff's dissatisfaction with the district's conduct in response to the OAH decision. Plaintiff filed a due process complaint on November 14, 2016, concerning whether the district had denied A.W. a FAPE by (1) failing to provide him with one-to-one ABA-trained aide with supervision by a BCBA for two hours per week after the IEP meeting, or (2) failing to file for due process hearing to prove that its offer of January 2016 was an offer of FAPE.

The Administrative Law Judge (ALJ) found the plaintiff had failed to meet his burden of proof as to either claim, and the district court upheld the ALJ's ruling. On the first issue, the court found that plaintiff had failed to demonstrate that BCBA supervision of A.W.'s aide was necessary in order for A.W. to receive a FAPE. On the second issue, the court noted that under California law, a school district is required to initiate a due process hearing when a school district believes that some baseline educational program is necessary to ensure that a student receives a FAPE, but the student's parents refuse to consent to it. The facts of this case are reversed — in this case, A.W.'s parent was seeking a more specialized educational program than the district had proposed, while the district believed it was currently providing FAPE for the student, and the student was making progress towards his/her IEP goals. In affirming the ALJ's decision, the district court found that the school district was not required to seek a due process hearing when it believed it was providing a FAPE.

**CURRENT STATUS AND/OR OUTCOME:**

Parties are in the early stages of briefing the case for the 9th Circuit Court of Appeals. The ELA will file an amicus brief in support of the district.





## SPECIAL EDUCATION

*B.H. v. Manhattan Beach Unified School District* Case No. S25663 — California Supreme Court **NEW**

**MEMBER(S) INVOLVED:** Manhattan Beach Unified School District

**IMPORTANCE OF STATEWIDE ISSUE:**

The court of appeal’s holding that the Los Angeles Department of Child and Family Services (DCFS) is not a “public agency” within the meaning of Education Code section 56155 has the potential to create confusion and upset existing policies and practices for school districts and county offices of education.

**SUMMARY OF THE CASE:**

In this case, B.H. filed a lawsuit against Manhattan Beach USD demanding the district pay for placement and related costs at a residential treatment center. Manhattan Beach USD argued that it was not statutorily obligated to pay for the placement as the Los Angeles Department of Child and Family Services (DCFS) placed the student at the facility. The trial court agreed and found in favor of the district.

The Court of Appeal reversed, finding that administering funds through the Adoption Assistance program (AAP) by DCFS did not constitute a “placement” within the meaning of Education Code sections 56155 and 56156.4(a). The appellate court also found that because DCFS did not provide “special education or related services” to B.H. (relying on Education Code section 56028.5), DCFS was not a “public agency, other than an educational agency” under Education Code section 56155, and therefore its conduct in providing financial assistance to parents could not qualify as a “placement” under that code section.

ELA filed amicus letters with the California Supreme Court in support of the district’s petition for review and request for depublication on July 26, 2019.

**CURRENT STATUS AND/OR OUTCOME:**

The Supreme Court denied the district’s petition for review and request for depublication on August 14, 2019. The Court of Appeal’s decision remains good law and must be taken into consideration when similar factual issues arise.

## CHARTER SCHOOL RENEWAL

*Oxford Preparatory Academy v. Chino Valley Unified School District* Case No. S257528 — California Supreme Court

**NEW**

**MEMBER(S) INVOLVED:** Chino Valley Unified School District

### IMPORTANCE OF STATEWIDE ISSUE:

Under the Education Code, charter schools must petition their school district authorizers for renewal of their charter, and school districts are tasked with ensuring the charter schools they oversee are meeting minimum levels of academic performance for all students. The court's finding that a charter school has a fundamental vested right in continuing operation could lead to a higher standard of review where courts do not defer to the expertise of school district governing boards, and would lead courts to reweigh evidence and exercise independent judgment to determine whether a school district's findings are supported by substantial evidence, making it more difficult for authorizers to make appropriate final nonrenewal decisions for charter schools in their districts.

### SUMMARY OF THE CASE:

Charter school Oxford Preparatory Academy (Oxford Prep) filed a petition for renewal to Chino Valley USD in 2016. Although the charter school had achieved academic success based on test scores, the school's principal had reportedly used the school's funding for personal profit according to California's Fiscal Crisis and Management Assistance Team. Due in part to concerns regarding financial irregularities and Oxford Prep's governance structure, Chino Valley USD denied Oxford Prep's charter renewal petition, and the charter school's appeals were subsequently denied by the County Board and State Board of Education.

Oxford Prep filed a civil action to challenge the denial of their petition to renew. Oxford Prep argued in the trial court that the district violated Education Code section 47607, which says that the district must consider the charter school's academic achievement as the most important factor when determining whether to grant or deny the renewal petition. Oxford Prep also argued that, because the school had relatively high-test scores, the renewal petition, should not or cannot be denied under the law. Finally, Oxford Prep argued that the district failed to make detailed written findings supporting its decision. The trial court found that the district's decision was not arbitrary or capricious, and denied Oxford Prep's writ petition.

The Appellate Court overturned the trial court's ruling and decided against Chino Valley USD, holding that the school district's decision to deny a charter school renewal petition substantially affects a "fundamental vested right" and therefore requires independent judicial review. Chino Valley USD has filed a petition with the California Supreme Court seeking review, and plans to file a request to depublish the court of appeal decision. The ELA filed an amicus letter in support of the district's request for depublication.

### CURRENT STATUS AND/OR OUTCOME:

On October 23, 2019, the California Supreme Court granted the district's request for depublication.

Non profit  
U.S. Postage  
**PAID**  
Permit #2097  
Sacramento, CA

