

February 19, 2013

FOR LODGING PENDING COURT APPROVAL FOR FILING

Honorable Allen H. Sumner
Superior Court of California, County of Sacramento
Department 42
720 Ninth Street
Sacramento, CA 95814

**Re: *Acquisto et al. v. Sacramento City Unified School District,*
Sacramento County Superior Court Case No. 34-2012-80001173;
Request for Leave to File Amicus Curiae Brief in Support of Respondent
Sacramento City Unified School District's Opposition to Petitioners' Petition
for Writ of Administrative Mandate
Client-Matter: CA115**

Dear Honorable Judge Sumner:

This letter and request for leave to file an *amicus curiae* brief in *Acquisto et al. v. Sacramento City Unified School District*, Sacramento County Superior Court Case No. 34-2012-80001173, is made on behalf of the California School Boards Association. Enclosed with this letter is California School Boards Association's Amicus Curiae Brief in Support of the Sacramento City Unified School District's Opposition to Petitioners' Petition for Writ of Administrative Mandate, Declaratory and Injunctive Relief.

California School Boards Association is an association of over 800 governing boards of the state's 1000 school districts. The California School Boards Association supports local school board governance and advocates on behalf of school districts and county offices of education. The California School Boards Association helps to ensure that local school boards retain the authority to fully exercise the responsibilities vested in them by law to make appropriate policy and fiscal decisions for their local educational agencies. As described in the attached brief and declaration of Keith Bray, California School Boards Association has a significant interest in this litigation before the Court, and believes that the results of this litigation, as well as on potential appeal(s) from this Court's ruling will have statewide impact on all California school districts and the quality of education that those districts can provide to their students.

Although not the norm (as in the appellate or California Supreme Court level), *amicus curiae* may lodge with and/or seek leave to file an amicus curiae brief with this Court in relation to the *Acquisto* litigation, which the Court may accept and consider at its discretion. (See CEB, Cal. Civil Appellate Practice (Cont. Ed. Bar 3d ed., updated May 2009), § 14.66, citing *In re*

Veteran's Industries, Inc. (1970) 8 Cal.App.3d 902, 924 and *People v. City of Long Beach* (1960) 183 Cal.App.2d 271, 276.) Lodging a proposed amicus curiae brief with a request for leave to file is an approved practice throughout California, and there is an abundance of examples of trial courts permitting and following such a process. (See, e.g., *Cal. Attorneys v. Schwarzenegger* (2009) 174 Cal.App.4th 424, 431 ["Attorney General Edmund G. Brown, Jr., filed an amicus curiae brief in the trial court."]; *State Bldg. & Const. Trades Council of Cal. v. Duncan* (2008) 162 Cal.App.4th 289, 300, fn. 4 ["After Trades Council started this action, the Coalition sought leave to intervene. The trial court did not allow intervention, but it did permit the Coalition to file a 'response' that would be treated as an amicus curiae brief."]; *Cates v. Cal. Gambling Control Com.* (2007) 154 Cal.App.4th 1302, 1313 ["A number of tribes submitted amicus curiae briefs to the trial court arguing, among other things . . ."]; *Union Bank of California, N.A. v. Super. Ct.* (2005) 130 Cal.App.4th 378, 386 ["The OCC subsequently filed an amicus curiae brief in the trial court in support of Union Bank's request for reconsideration."].


As described in the attached brief and declaration of Keith Bray, CSBA has a significant interest in the outcome of this litigation. Moreover, California School Boards Association's *Amicus Curiae* Brief will assist the Court in this matter because the Association can add to the Court's understanding of the legal authority imposed on school boards, as well as the grant of authority given to these boards in fulfilling their duties.

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Based upon all of the above, California School Boards Association respectfully requests that the Court grant leave for and order the filing of attached *Amicus Curiae* Brief, and to consider the brief in its discretion when determining the merits of this case.

Very truly yours,

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SACRAMENTO

12 YVETTE ACQUISTO, et al.,

13 Petitioners/Plaintiffs,

14 v.

15 SACRAMENTO CITY UNIFIED
16 SCHOOL DISTRICT,

Respondent/Defendant.

Case No.: 34-2012-80001173

**CALIFORNIA SCHOOL BOARDS
ASSOCIATION'S AMICUS BRIEF IN
SUPPORT OF RESPONDENT'S OPPOSITION
TO PETITIONER'S FIRST AMENDED
PETITION FOR WRIT OF
ADMINISTRATIVE MANDAMUS**

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Dept.: 42
Judge: Hon. Allen H. Sumner

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2 **I. INTRODUCTION**

3 On January 27, 2013, the National School Boards Association convened its 40th annual
4 Federal Relations Network Conference in Washington DC, where over 700 board members and
5 state association leaders from across the country joined together to lobby on behalf of America's
6 public school students. (Declaration of Keith J. Bray ("Bray Decl."), ¶ 4.) At the top of NSBA's
7 list of issues was new legislation designed to re-affirm at the federal level, local educational
8 agencies as the principal democratic governance body for determining how children in local
9 communities are educated. (*Id.*) *Amicus*, the California School Boards Association ("CSBA")
10 shares in this national concern over possible erosion of local boards' ability to direct the
11 education of their students, and actively participated in the conference. CSBA submits that the
12 instant case raises similar concerns at the state level, and thus presents a matter of concern to the
13 946 school boards and county office of education that it represents throughout California.

14 Specifically, Petitioners' challenge threatens to undermine a governing board's lawful
15 exercise of its discretion to determine the needs of its students, and approve a program of study
16 designed to meet those needs. The Governing Board of the Sacramento City Unified School
17 District ("Board"), like many school boards across the state and nation, faces the challenge of
18 improving student success at schools that have not shown adequate progress for years. It has met
19 this challenge as a board should: by approving an innovative program (the "Priority Schools
20 Program") designed to meet the unique needs of its students in these under performing schools.

21 The Board also exercised its authority to protect the Priority School Program in the
22 context of a layoff. The Board protected this innovative program by designating it as a "specific
23 course of study" and determining that it needed to retain less senior teachers who had particular
24 skills and training that the Board required of teachers in this unique course of study. The ALJ
25 presiding over the ensuing layoff hearing properly reached three important conclusions in her
26 proposed decision. The Board's adoption of these findings should not be disturbed:

27 1) That the District's Priority Schools are a "course of study," as that term is used in
28 Education Code section 44955(d)(1). Indeed, the ALJ described them as "incubators of

1 innovation.” (Proposed Decision, Findings ¶¶ 86-92, 97);

2 2) That the Board did not abuse its discretion in establishing criteria that permitted
3 skipping teachers with special skills and training to teach this course of study. (Proposed
4 Decision, Findings 86-101); and

5 3) That the Board properly applied these criteria to the majority of cases. (*Id.*)

6 The ALJ erred, however, in rejecting the Board's determination that teachers who had
7 taught in Priority Schools less than one year had the special skills and training to justify skipping
8 them. Similarly, the ALJ erred in invalidating the Board's decision to skip counselors. In both
9 instances, the ALJ overstepped when she supplanted her own judgment for that of the Board, and
10 thus failed to apply the abuse of discretion standard that is required. Rather, once the ALJ
11 concluded that the skip criteria were valid, her inquiry should have been limited to whether or not
12 the criteria were accurately and consistently applied. Accordingly, it is also proper for the Board
13 to reject portions of the ALJ's decision.

14 **II. THIS CASE PRESENTS A QUESTION OF STATEWIDE CONCERN**
15 **INVOLVING THE PROPER DISCRETION OF SCHOOL BOARDS TO FULFILL**
16 **THEIR MISSION TO THEIR STUDENTS**

17 **A. THE CALIFORNIA SCHOOL BOARDS ASSOCIATION**

18 *Amicus curiae* is the California School Boards Association (“CSBA”), a California non-
19 profit corporation. CSBA is a member-driven association composed of 946 elementary and
20 secondary school district governing boards and county boards of education throughout California.
21 CSBA provides its members with a wide range of services including policy analysis, legal
22 advocacy, legislative representation, professional development workshops and information
23 services. (Bray Decl., 2.) As part of CSBA, the Education Legal Alliance (“Alliance”) helps to
24 ensure that local school boards retain the authority to fully exercise the responsibilities vested in
25 them by law to make policy and fiscal decisions for their school districts. (Bray Decl., 3.) The
26 Alliance represents its members by addressing legal issues of statewide concern to school
27 districts. (*Id.*) The Alliance's activities include joining in litigation where the interests of public
28 education are at stake. As discussed below, this is a matter of statewide concern. (*Id.*)

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**B. THE ISSUES PRESENTED HERE AFFECT ALL DISTRICTS, NAMELY:
THE SCOPE OF A BOARD'S AUTHORITY TO ESTABLISH ESSENTIAL
EDUCATIONAL PROGRAMS AND PROTECT THEM FROM THE
DISRUPTION OF LAYOFFS**

This case raises questions regarding the proper interpretation of Education Code section 44955, which governs the process and procedure for implementing layoffs. Sadly, the current fiscal crisis makes the need for clarity regarding board authority in the administration of layoffs a matter of concern to school districts across the state.

Further, and of particular concern here, this case calls into question the ability of boards to protect courses of study designed to meet the unique needs of their student populations, especially those students attending low performing schools. At a time when school districts face increased accountability for their students' success, the ability to design, implement and protect such courses of study touches virtually all CSBA member districts. (Bray Decl., ¶ 8.) Indeed, where schools fail to make adequate progress, federal law usurps local board discretion by requiring districts to restructure their personnel or face the threat of state takeover. (20 U.S.C. § 6316; Ed. Code, § 52055.59.)

Counsel for the *Amicus*, CSBA, is familiar with the issues presented in this case and their significance for the state's school districts. CSBA believes additional discussion concerning the statutes and constitutional doctrines at issue will be helpful. CSBA's brief reviews the constitutional and statutory provisions that grant discretion to governing boards to develop layoff criteria in line with the needs of that particular district. A decision overturning the Board's resolution, passed after careful consideration of many factors, would vitiate the State's grant of discretion, effectively handcuffing boards' efforts to fulfill their mission to the students they are charged to serve.

III. STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. THE HIGH ACCOUNTABILITY BACKDROP

The federal No Child Left Behind Act established a complex and exacting set of standards and requirements that school districts must follow. For example, schools must report Academic Yearly Progress on certain academic benchmarks. (20 U.S.C. § 6316.) If a school does not show

1 sufficient progress, it is assigned Program Improvement Status, and thereafter faces escalating
2 consequences for failing to improve, up to and including school restructuring and State takeover.
3 (*Id.* at §§ 6316 & 6842. See Ed. Code, § 33126; 52055.59

4 Virtually all districts across the state are faced with meeting these requirements while
5 coping with reduced funding. However, not all districts are alike. CSBA's members are urban
6 and rural, large and small. (Bray Decl., ¶ 7.) Some have a single school with fewer than 200
7 students; others oversee hundreds of schools serving upwards of 200,000 students. (*Id.*) CSBA's
8 member districts also vary widely with respect to the communities and student populations they
9 serve. This very diversity exemplifies the importance of maintaining local flexibility to design
10 courses of study to meet a particular school community's unique needs. For example, some
11 districts must focus on the particular needs of migrant farming families; some serve communities
12 where there are over 100 different primary languages spoken at home; some serve large numbers
13 of students in poverty, and many districts must protect courses of study developed to address the
14 needs of its low performing students. (*Id.*) What all these districts have in common is the need to
15 be able to design and provide courses of study tailored to serve their communities.

16 B. THE CONSTITUTIONAL RIGHTS BACKDROP

17 The California Constitution guarantees to all California public school students a
18 fundamental right to "basic equality of educational opportunity." (*Butt v. State of California*
19 (1992) 4 Cal.4th 668, 685.) Further, as the Supreme Court has recognized, "we must
20 unsympathetically examine any action of a public body which has the effect of depriving children
21 of the opportunity to obtain an education." (*Serrano v. Priest* (1971) 5 Cal.3d 584, 606-07
22 ("*Serrano I*") citing *Manjares v. Newton* (1966) 64 Cal.2d 365, 375-376.) Thus, school districts
23 have a legal duty grounded in the Constitution, as well as the statutory law summarized above, to
24 provide students with equal educational opportunities—and face equal protection challenges if
25 they fail to do so. (See, e.g., *Reed v. State of California* (2012) 208 Cal.App.4th 322, 346-48;
26 *Serrano v. Priest* (1976) 18 Cal.3d 728 ("*Serrano II*"); *Butt v. State of California* (1992) 4 Cal.4th
27 668, 673 & 685; *O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1465.)
28

1 For example in *O'Connell*, the court recognized that, "established California case law
2 holds that there is a fundamental right of equal access to public education, warranting strict
3 scrutiny of legislative and executive action that is alleged to infringe on that right." Applying this
4 body of law, the Court of Appeal found that "students in economically challenged communities
5 have not had an equal opportunity to learn the materials tested" on the graduation test. As such,
6 the court held that "plaintiffs established a likelihood of success on the merits as to the denial of
7 their fundamental right to equal educational opportunity." (*Id.* at 1465.)

8 Thus, school boards not only enjoy broad discretion to design and implement education
9 programs; they are compelled to implement such programs to address significant lack of progress
10 in particular schools or populations. Where educational inequality appears to exist, they may not,
11 "sit idly by" and allow such inequities to persist. (*Butt, supra*, at 685.)

12 **C. THE BOARD'S ACTIONS REGARDING THE 2011-2012 LAYOFF**

13 Faced with the requirements of NCLB and the constitutional rights of its students, the
14 District took the following steps:

15 • In March 2010, the Board authorized designating as "Priority Schools" those that
16 had been in Program Improvement Plan status for 5 or more years. (Respondent/Defendant's
17 Brief in Opposition to Petition for Writ of Administrative Mandate and Complaint for Declaratory
18 Relief ("Respondent's Brief"), 2:12-24; 3:2-6, fn. 3);

19 • Provided the Priority Schools with innovative training and instructional strategies
20 that were not used at other schools in the District. (Respondent's Brief, 3:7-17.)

21 • Provided that teachers be assigned to Priority Schools on a voluntary basis and that
22 they receive extensive training and professional development. (Respondent's Brief, 3:7-8:27.)

23 • Monitored the success of these efforts using objective indicators of student
24 performance and found them to be highly successful. (Respondent's Brief, 8:11-22.)

25 When the Board determined that the budget for 2012-2013 required layoffs, it acted to
26 protect the special programs developed at the Priority Schools. Specifically, the Board concluded
27 that it should skip teachers who "are currently serving in a Priority School assignment, who will
28 also be teaching in a Priority School assignment for the 2012-2013." (Proposed Decision,

1 Findings ¶ 66.) The Board determined that teachers had the special skills and training to teach in
2 a Priority School if they had “training and/or experience teaching in a Priority School setting.”
3 (Proposed Decision, Findings ¶ 15.)

4 **D. THE BOARD’S CONSIDERATION AND MODIFICATION OF THE ALJ’S**
5 **RECOMMENDED DECISION**

6 The teachers’ union challenged the layoff on a variety of grounds, including the
7 application of skips to the District’s Priority Schools. After the layoff hearing, the ALJ issued a
8 *proposed* decision, which considered Petitioners’ arguments; however, the ultimate authority for
9 laying off employees rests with the Board. (Educ. Code § 44949(c)(3).) In her proposed
10 decision, the ALJ determined that the Priority Schools constituted a “course of study.” Therefore,
11 she further concluded that the District was authorized to apply skips to teachers that had particular
12 skills to serve in the Priority Schools. (Proposed Decision, Findings ¶¶ 86-93.) However, she
13 invalidated the application of the skip criteria where she concluded that teachers did not have
14 sufficient training or experience. (Proposed Decision, Findings ¶¶ 102-105, 113-117.) For this
15 reason, she also invalidated the competency criteria. (*Id.*)

16 The Board met twice to consider the findings and conclusions proposed by the ALJ and to
17 hear argument by the teachers’ union. (Respondent’s Brief, 11:14-12:11.) At its second meeting,
18 the District also heard comments from 81 members of the public, teachers, and parents.
19 (Respondent’s Brief, 11:28-12:2.) After deliberating, the Board adopted the majority of the
20 ALJ’s findings, and modified others in accordance with the needs of the District’s students.
21 (Respondent’s Brief, 12:2-11.)

22 **IV. STANDARD OF REVIEW**

23 In an administrative writ of mandate, though the Court exercises independent review of
24 the record to determine whether the findings are supported by a preponderance of the evidence,
25 the Court:

26 must afford a strong presumption of correctness concerning the
27 administrative findings, and the party challenging the findings
28 bears the burden of convincing the court that the administrative
findings are contrary to the weight of the evidence.

1 (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817 (emphasis added); Code Civ. Proc.
2 §1094.5(c).) The decision of the agency—here the Governing Board--can be disturbed only if it
3 constitutes a prejudicial abuse of discretion. (Code Civ. Proc. § 1094.5(b).) “An abuse of
4 discretion is established if the respondent has not proceeded in the manner required by law, the
5 order or decision is not supported by the findings, or the findings are not supported by the
6 evidence.” (*Kolender v. San Diego Cnty Civil Service Com'n* (2007) 149 Cal.App.4th 464, 470.)

7 In *Fukuda, supra*, the California Supreme Court reaffirmed the long-established principle
8 that “the record of the administrative board shall come before the court endowed with a strong
9 presumption in favor of its regularity and propriety in every respect.” (*Fukuda, supra*, 20 Cal.4th
10 at 814. (emphasis added.)) It explained that “rarely, if ever, will a board determination be
11 disturbed unless the petitioner is able to show a jurisdictional excess, a serious error of law, or an
12 abuse of discretion on the facts.” (*Id.* at 814. (emphasis added.)) In a teacher layoff, the court
13 considers whether a board has acted arbitrarily or capriciously and not whether the court would
14 have come to the same conclusion. (*Santa Clara Fed. of Teachers v. Governing Board* (1981)
15 116 Cal.App.3d 831, 845.) A decision of a school board is reasonable if it is not arbitrary and
16 capricious and “its action is measured by the standard set by reason and reasonable people,
17 bearing in mind that such a standard may permit a difference of opinion on the same subject.”
18 (*Id.*)

19 This standard was recently recognized by an ALJ in a layoff context in *Bellflower Unified*
20 *School District* (Rosenman 2011),¹ which upheld a district layoff, including utilization of skip
21 criteria to keep a junior teacher with expressed interest in the special assignment who had
22 completed half the required training. Relying on *Campbell v. Abbott* (1978) 76 Cal.App.3d 796,
23 808, the ALJ explained, “reasonable minds can differ regarding the rationale and need for
24 “flexibility” and for retaining “local control” at the expense of laying off significant numbers of
25 the District’s certificated personnel. No evidence that the Board acted in an arbitrary and
26 capricious manner was presented. In the absence of such evidence, the Board’s determination
27 should not be disturbed. (*Ibid.*)

28
¹ See Amicus’s Request for Judicial Notice.

1 **V. ARGUMENT**

2 **A. THE CALIFORNIA CONSTITUTION GRANTS BROAD DISCRETION**
3 **TO LOCAL SCHOOL BOARDS**

4 California's school boards exercise unique and important constitutional responsibilities.

5 Article IX, section 1, commands that the Legislature "shall encourage by all suitable
6 means the promotion of intellectual, scientific, moral, and agricultural improvement." Because "a
7 general diffusion of knowledge and intelligence [is] essential to the preservation of the rights and
8 liberties of the people," section 5 of the same article requires the Legislature to "provide for a
9 system of common schools by which a free school shall be kept up and supported in each district
10 at least six months in every year, after the first year in which a school has been established."

11 The Constitution further provides for the incorporation and organization of school districts
12 in article IX, section 14. The governing boards of school districts are authorized "to initiate and
13 carry on any programs, activities, or to otherwise act in any manner which is not in conflict with
14 the laws and purposes for which school districts are established." (Article IX, section 14.)
15 Accordingly governing boards are vested with discretion to fulfill the constitutional duty to
16 provide for the education necessary for all citizens.

17 **B. IN SUPPORT OF BOARDS' CONSTITUTIONAL RIGHTS AND**
18 **RESPONSIBILITIES, THE EDUCATION CODE EXPLICITLY GRANTS**
19 **LOCAL BOARDS BROAD DISCRETION TO DESIGN AND IMPLEMENT**
20 **EDUCATIONAL PROGRAMS AND PROTECTS THIS DISCRETION IN**
21 **THE CONTEXT OF LAYOFFS**

22 The Education Code recognizes the California Constitution's broad grant of discretion to
23 school boards to design programs tailored to meet their students' needs. It provides, "the
24 governing board of any school district may initiate and carry on any program, activity, or may
25 otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by,
26 any law and which is not in conflict with the purposes for which school districts are established."
27 (Ed. Code, § 35160.) Section 35160.1 affirms this principle and recognizes that this discretion is
28 necessary because "school districts . . . have diverse needs unique to their individual communities
and programs." (Ed. Code, § 35160.1.) Section 35160 was enacted "to give school districts ...
broad authority to carry on activities and programs, including the expenditure of funds for

1 programs and activities which, in the determination of the governing board of the school district
2 ... are necessary or desirable in meeting their needs” and must “be liberally construed to effect
3 this objective.” (*Id.*)

4 Consistent with the applicable standard of review in this matter, these statutes require that,
5 where a school board has specifically designed such a program and has correctly applied it, the
6 court may not substitute its judgment for that of the board’s, unless there is a clear abuse of
7 discretion. The more specific Education Code provisions setting forth the procedures for layoffs
8 do not require a different conclusion. To the contrary, they are consistent with the Code’s
9 deference to local board discretion in several respects.

10 The decision whether to implement a layoff, and if so, which programs and services to
11 cut, is reserved to each district’s board of education. (*Hildebrandt v. St. Helena Unified School*
12 *Dist.* (2009) 172 Cal.App.4th 334, 343.) Further, where a board decides to implement a layoff, it
13 is given exclusive authority to identify the criteria for breaking seniority ties, consistent with the
14 needs of the district and its students. (Ed. Code, § 44955 (“As between employees who first
15 rendered paid service to the district on the same date, the governing board shall determine the
16 order of termination solely on the basis of needs of the district and the students thereof.”); see
17 also *Moreland Teachers Assn. v. Kurze* (1980) 109 Cal.App.3d 648, 655.)

18 Finally, Section 44955(c) and (d) authorize school boards to deviate from lock-step
19 seniority in layoffs. Section 44955(d)(1) confers broad discretion on boards to “skip,” i.e., retain
20 less senior teachers who have special skills and training (as determined by the board) to serve in
21 a particular course or courses of study. (*Duax v. Kern Community College Dist.* (1987) 196
22 Cal.App.3d 555, 565.) Similarly, section 44955(c) allows boards to determine the criteria that
23 regulate whether a teacher subject to layoff is competent to “bump” into a new position held by a
24 less senior teacher.

25 The courts have affirmed interpretations of these statutes that give broad discretion to
26 boards in establishing and applying skip criteria. In a layoff, “[s]chool districts have broad
27 discretion in defining positions within the district and establishing requirements for employment.
28 This discretion encompasses determining the training and experience necessary for particular

1 positions . . .” (*Hildebrandt, supra*, 172 Cal.App.4th at 343 (internal citations omitted).) This
2 authority establishes that a court should not disturb the Board’s determination of its own needs
3 where the Board shows that it has met the statutory criteria.

4 Further, given the significant constitutional and statutory duties imposed on districts to
5 provide equal and meaningful educational opportunities to their students, CSBA asserts that this
6 discretion must be vigilantly protected. To find, instead, that protecting creative programs like
7 Respondent’s is unlawful, would condemn districts to perpetuating the very inequalities these
8 programs are designed to correct and that the law prohibits.

9 **C. THE BOARD DID NOT ABUSE ITS DISCRETION EITHER BY**
10 **DETERMINING THE SKILLS AND TRAINING NECESSARY TO SERVE**
11 **IN ITS PRIORITY SCHOOLS OR BY MODIFYING THE PROPOSED**
12 **DECISION OF THE ALJ, AND AS SUCH ITS DECISION SHOULD NOT**
13 **BE DISTURBED**

14 Recently, in *Reed v. State of California* (2012) 208 Cal.App.4th 322, 328, students sued
15 the Los Angeles Unified School District for failing, in a layoff, to skip teachers at low performing
16 schools and alleged that the layoffs denied “them the constitutional right to equal educational
17 opportunities” by creating intolerably high turnover in their schools. To resolve claims that
18 teacher lay-offs had disproportionately and adversely impacted the students’ constitutional and
19 statutory rights to equal educational opportunities, and that additional lay-offs would exacerbate
20 the harm, the students negotiated a consent decree with the district to stabilize the schools in case
21 of another layoff. (*Id.* at 328, 346) After a fairness hearing, the trial court determined that “high
22 teacher turnover devastates educational opportunity in multiple ways.” (*Id.* at 328, 346-48.) The
23 record demonstrated that the stability of the teaching force is correlated with student success.
24 (*Id.*) The trial court also found that teacher layoffs disproportionately affected the District’s
25 academically struggling schools. (*Id.* at 347-48.) Although the settlement was overturned on
26 procedural grounds, the Court of Appeal did not disturb the trial court’s factual findings.
27 Moreover, the Court found that “a proper legal basis” for the skipping at issue may have been
28 section 44955(d), however, the teacher’s union was entitled to a full trial to determine whether the
facts supported skipping teachers in this manner. (*Id.* at 338.) The Court of Appeal implicitly
approved skipping under § 44955 (d) to protect the rights of students to a stable teaching staff.

1 Here we have a correct use of 44955(d)(1), to accomplish exactly the same goal the court
2 affirmed in *Reed*.

3 **1. The Governing Board's Creation of the Priority Schools as a Specific**
4 **Course of Study was Proper and not an Abuse of Discretion.**

5 Prior to their designation as Priority Schools, the schools at issue in this case were the
6 lowest performing schools in the District and among the 20% lowest performing schools in
7 California. (Respondent's Brief, 2:12-24.) All had failed to meet the No Child Left Behind Act
8 goals and had been in Program Improvement status for five or more years. (*Id.* at 3:2-6, fn. 3.)
9 They also suffered "tremendous turnover." (*Id.* at 3:1-2; cf. *Reed v. State of California, supra.*)

10 Additionally, the students served at the schools come from a historically underserved
11 population. The schools serve mainly minority students and English Language learners.
12 (Respondent's Brief, 2:25-26.) The ALJ specifically found that more than 90% of the students at
13 five of the Priority Schools live in or near the poverty level. (Proposed Decision, Findings ¶ 30.)
14 The Priority Schools also have the highest amount of minority and economically disadvantaged
15 students.

16 To remedy these conditions, the District provided services found nowhere else in the
17 District. As previously noted, the ALJ found the Priority Schools were "incubators of
18 innovation," which necessarily means that the services provided at these schools were unique.
19 The Board devoted substantial resources to provide training to the faculty. (Proposed Decision,
20 Findings, ¶ 97; Respondent's Brief, 4:1-8:10 (describing the extensive training, in which the
21 faculty took part.)) The faculty teaching at the schools was unique, as well. All teachers who did
22 not want to be a part of the program had the opportunity to leave, and many did so. (Proposed
23 Decision, ¶ 98.) The ones who remained, or transferred in, became part of a collaborative
24 process, working with other teachers, students, and the parents to help achieve student success.
25 (Respondent's Brief, 4:1-6:17.) Under these circumstances, it was reasonable that the Board
26 found that the program developed in the Priority Schools was a specific course of study. There is
27 no evidence that the Board acted arbitrarily in making this determination and the Board's
28 discretion in doing so should not be disturbed.

1 Against this backdrop, no abuse of discretion can be found in the Board’s determination
2 that teachers who had received some training and experience, but worked less than one year in the
3 Priority Schools, possessed the requisite skills and training to be skipped. The value placed by
4 the Board on the training received, opportunities to apply the training directly at a program site,
5 and the experience garnered in the collaborative process, are not subject to second-guessing by an
6 ALJ. No evidence was produced (or could have been) that this experience was so trivial that the
7 Board abused its discretion in giving it weight. As such, the ALJ overreached in concluding that
8 these teachers lacked sufficient skills or training to justify being skipped.

9 As a logical corollary to the District’s skip criteria, the Board exercised its authority under
10 section 44955(c) to set competency criteria under which a teacher was not considered competent
11 to serve in its Priority Schools without having actual experience teaching in that setting. Because
12 the skip criteria authorized retention of less senior staff with such experience, these competency
13 criteria did no more than ensure against an “end run” around the District’s legitimate skip
14 determinations by teachers seeking to bump into the Priority Schools. Moreover, the criteria
15 established are reasonable on their face. As the court recognized in *Bledsoe v. Biggs Unified*
16 *School Dist.* (2008) 170 Cal.App.4th 127, 135, “criteria where competency shall mean, at a
17 minimum, possession of a preliminary, clear, professional clear, lifetime, or other full credential,
18 or at least one semester actual teaching experience in alternative education within the last five
19 years is valid.” Thus the Board’s requirement of actual experience in a Priority School was
20 reasonable and should not be disturbed.

21 **3. The Governing Board’s Reemployment Criteria Were Proper and not**
22 **an Abuse of Discretion**

23 In the companion case, 34-2011-80000997, Sacramento City Teachers Association filed a
24 writ under Code of Civil Procedure section 1085 alleging error in the District’s reemployment of
25 teachers to the Priority Schools. However, the writ is fatally flawed because the reemployment
26 decisions involved the exercise of discretionary, and section 1085, “cannot be used to control a
27 matter of discretion.” (*Entezampour v. North Orange County Community College Dist.* (2010)
28 190 Cal.App.4th 832, 838.)

1 Education Code section 44956 governs reemployment and allows boards to adopt
2 competency criteria to be applied in determining whether a laid off employee has the necessary
3 competency to fill a vacant position. Here, the Board determined that teachers were competent to
4 teach in a Priority School only if they had experience or training to teach in a Priority School
5 Setting. In accordance with the Board's duties and findings described above, it acted well within
6 its grant of discretion in choosing to reemploy some, but not all, teachers on the reemployment
7 list. This Court should not disturb the Board's discretionary decisions in determining which
8 teachers are competent to teach in the Priority Schools.

9 **4. The Governing Board Properly Exercised its Discretion to Determine**
10 **Whether To Accept Or Reject The ALJ's Decision**

11 As an initial matter, *Amicus* notes that, in the context of layoff hearings, ALJs are
12 authorized to render a *proposed* decision only. (Ed. Code, § 44949(c)(3).) The ultimate decision
13 whether and how to administer a layoff rests with boards of education. Section 44949
14 specifically provides:

15 The governing board shall make the final determination as to the
16 sufficiency of the cause and disposition. None of the findings,
17 recommendations, or determinations contained in the proposed
18 decision prepared by the administrative law judge shall be binding
19 on the governing board.

20 This is in contrast to teacher termination hearings, for example, where the decision on appeal is
21 final and binding on governing boards. (See Ed. Code, § 44944(c).) Thus, even at the appellate
22 stage, the statutory scheme recognizes the uniquely complex budgetary and policy issues that
23 inform a layoff, and confers upon boards the ultimate authority to determine how they should be
24 implemented. In the instant matter, Petitioners essentially argue that the Board abused its
25 discretion by accepting portions of the ALJ decision while rejecting others. However, no abuse
26 of discretion can be found in the Board's handling of the proposed decision. Thus, the argument,
27 if accepted, would simply vitiate the discretion provided by statute.

28 First, as discussed above, the Board properly accepted the ALJ's conclusions that skipping
teachers who teach in the Priority Schools is proper. The District established it had a specific
need, that the program was a specific course of study, and that the teachers had the training or
experience in the course of study. The ALJ's decision contains detailed findings on these issues.

1 (Proposed Decision, Findings ¶¶ 83-101.)

2 Second, it was also proper for the Board to reject portions of the ALJ's decision. The ALJ
3 overstepped when she supplanted her judgment for the Board's in weighing its skip criteria.
4 (Proposed Decision, Findings ¶¶ 102-105, 113-117.) She also erred in finding that the Board's
5 determination to skip teachers to preserve the stability of the program was irrelevant. (Findings
6 ¶¶ 98-99.) Given the success of the program, the substantial resources expended, and the damage
7 layoffs would do to the program, the Board reasonably found that it had a specific need to skip
8 the teachers—a highly relevant inquiry under section 44955(d)(1). (See *Bledsoe, supra*, 170
9 Cal.App.4th at 138 (finding that district's need is relevant to determining whether a skip is
10 permissible); *Reed, supra*, 208 Cal. App. 4th 322, 338 (seniority rights may be altered if there is a
11 proper legal basis, which can include student rights).) The ALJ further erred in invalidating skips
12 of counselors, as there was no abuse of discretion in the board's determination that they had
13 special skills and training to serve in the Priority Schools. Finally, the ALJ failed to detail why
14 the competency criteria the Board set were unreasonable. Competency criteria are reasonable if
15 the Board "considers the skills and qualifications of the teacher threatened with layoff." (*Duax,*
16 *supra*, 196 Cal.App.3d at 565.) It did so here, and the ALJ did not find otherwise.

17 Finally, the Board's process in reviewing and modifying the decision reflects careful
18 deliberation, not abuse. It considered its actions over two meetings. (Respondent's Brief, 11:14-
19 12:11.) It considered extensive public comment, argument from the union, and the
20 recommendations of its own staff before reaching its decision. (*Id.*) Such careful consideration
21 of all the evidence shows no sign that the Board abused its discretion. This Court should defer to
22 the Board's careful determination of how to meet the needs of its students most effectively.

23 **VI. CONCLUSION**

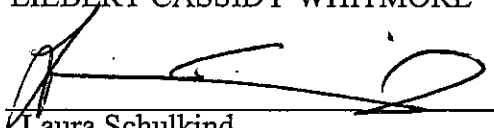
24 For the foregoing reasons, CSBA respectfully requests that this Court DENY Petitioners'
25 writ in all respects and provide such other relief as it deems appropriate.
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1 Dated: February 19, 2013

Respectfully submitted,

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CAROLYN ZIERENBERG, TAMMY ABDO,
21 TERESA ANDERSON, ANNE BROWN, JAMES
BROWN, EMILY CATLETT, BETH CONKLIN,
22 ALEJANDRO CORONA, MIA FLORES, JOY
HERZOG KRUSE, ADRIANE JACKSON, LISA
JARVIS, ERIKA JENSEN, STEPHANIE KURODA,
23 MARY LEE, ANGELA LOPEZ, JIM MCGEE,
MEGAN MOLINA, LISA NOMA, LISA STINSON,
24 SHOUA THAO, JADE VANG, and Does 1-25,

25 Petitioners/Plaintiffs,

26 v.

27 SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT,

28 Respondent/Defendant.

Case No.: 34-2012-80001173

[ASSIGNED FOR ALL PURPOSES
TO THE HON. ALLEN H. SUMNER,
DEPT. 42]

**REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
AMICUS BRIEF IN SUPPORT OF
RESPONDENT'S OPPOSITION
TO PETITIONER'S FIRST
AMENDED PETITION FOR WRIT
OF ADMINISTRATIVE
MANDAMUS**

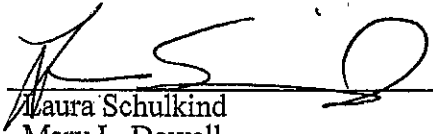
Date: March 8, 2013
Time: 1:30 p.m.
Dept.: 42
Judge: Hon. Allen H. Sumner

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Dated: February 19, 2013

Respectfully submitted,

LIEBERT CASSIDY WHITMORE

By: 

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EXHIBIT 1

BEFORE THE
GOVERNING BOARD OF THE
BELLFLOWER UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

CERTIFICATED TEACHERS OF THE
BELLFLOWER UNIFIED SCHOOL
DISTRICT

OAH No. 2011020903

Respondents.

PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Bellflower, California on April 27, 2011.

Eric Bathen, Attorney at Law, represented Bellflower Unified School District (District).

Carlos R. Perez, Attorney at Law, represented respondents Kristy Bailey, Carrie Binder, Rachelle Carman, Sylvia Chandler, Ryan Chemey, Angelica Contreras, Deborah Contreras, Keribeth Dethlefsen, Lane Fleshman, John Kevin Gaffney, Kevin Greiving, Stacy Johnson, Erin Kelly, Debra King, Monique Kroese, Kiyomi Kwak, Jeremy Lughill, Karen Meisner, Amber Musick, Maie Rozales-Braig, and Daniel Shaheen, all of whom were present at the hearing.

Respondents Kristina Nemeec, Michael Magnera, Alice Jones and Tara Hefferly did not appear.

Evidence was received by stipulation, testimony, and documents. The record was closed and the matter was submitted for decision on April 27, 2011.

FACTUAL FINDINGS

1. Rick Kemppainen is the District's Superintendent. Lisa Azevedo is the District's Assistant Superintendent for Instructional Personnel and Programs. Their actions were taken in their official capacity. Mr. Kemppainen made and filed the Accusations:

2. Respondents in this proceeding are certificated employees of the District.

3. Between March 11 and March 29, 2011, the District provided written notice to respondents pursuant to Education Code¹ sections 44949 and 44955 that their services would not be required for the 2011-2012 school year.

4. On March 22, 2011, the District filed and thereafter served the Accusations and related documents on respondents. Each respondent appearing in this matter filed a timely Notice of Defense requesting a hearing for a determination of whether cause exists for not reemploying them for the 2011-2012 school year. All prehearing jurisdictional requirements were met.

5. On March 10, 2011, the Board of Education (Board) of the District adopted *Resolution of the Board of Education's Intention to Reduce and/or Discontinue Particular Kinds of Service*, which provides for the elimination of "eighteen (18) single subject FTE reduction due to increased class size in grades 9-12, one (1) physical and health impairment FTE due to a reduction in student enrollment, three (3) mild/moderate FTE due to a reduction in student enrollment, two (2) moderate/severe FTE² due to a reduction in student enrollment, two (2) multiple subject FTE due to elimination of the First 5 program, three (3) designated subjects FTE due to the elimination of adult school programs, for a total of twenty (29) FTE reductions of particular kinds of services in grades pre-K-Adult School"

6. On March 10, 2011, the Board of the District adopted *Resolution of the Board of Education to Determine the Order of Termination of Certificated Personnel*, which establishes tie-breaker criteria for determining the relative seniority of certificated employees with the same date of first rendered paid service to the district as follows:

1. Special Credentials
 - A. Special Education (10 points)
 - B. School Psychologist, Speech and Language Therapist, School Counselor, and School Nurse (10 points)
2. Credentials Authorizing Service for Mathematics (10 points) or Science (10 points)
3. Professional Preparation, i.e., advanced degree (Master's or Doctorate) (4 points for each advanced degree)

¹ All statutory citations are to the Education Code, unless indicated otherwise.

² Ms. Azevedo testified that "mild/moderate" refers to resource specialist class and "moderate/severe" refers to class for students with special needs.

4. After applying No. 1 through No. 3 above, and ties remain the same, the following tie-breaking criterion shall be used: One (1) point for every accredited college/university semester unit (recognized by BUSD) earned after Bachelor's degree.
5. If the tie remains the same after applying No. 1 through No. 4 above, the following tie-breaking criterion shall be used: One (1) point for each college/university semester unit (recognized by BUSD) earned after Bachelor's degree in academic core subject areas.
6. If the tie continues after applying No. 1 through No. 5 above, the following tie-breaking criterion shall be used: Total years of teaching experience K-12.
7. The services set forth in Factual Finding 5 are particular kinds of services which may be reduced or discontinued within the meaning of section 44955.
8. The Board took action to reduce the services set forth in Factual Finding 5 because of uncertainty surrounding future State funding. The decision to reduce services was not related to the capabilities and dedication of the individuals whose services are proposed to be reduced or eliminated. The decision to eliminate the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.
9. Ms. Azevedo was responsible for implementation of the technical aspects of Board's Resolutions. She reviewed information in multiple personnel files as well as data from the California Commission on Teacher Credentialing to compile a tentative seniority list containing seniority dates, current assignments, and credentials and certifications. She distributed the list to certificated employees within the District for them to verify, update or correct pertinent information.
10. The District used the seniority list to develop a proposed layoff and "bumping" list of the least senior employees currently assigned in the various services being reduced. The District then determined whether more senior employees affected by the layoffs held credentials in another area and were entitled to "bump" other less senior employees. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could "bump" other employees.
11. The District properly considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of layoff notices to be delivered to employees by March 15, 2011.

12. The District rescinded the layoff notices to Betsy Kim, Ron McKinskey, Daniel Droessler and Toan Vo.

13. Debra King, whose undisputed seniority date is September 14, 1992, holds a public affairs credential and children center permit. She previously taught in the District's adult program. She currently teaches in the District's child development center. She contends that she should be re-assigned to teach in the adult program, or alternatively, her children center permit should allow her to "bump" into a Head Start teaching position. It was established at hearing that Ms. King's children center permit does not authorize her to teach adult education and that Head Start is a permit position allowing for no "bumping" rights. Consequently, Ms. King's contentions are meritless. The District correctly identified Ms. King as an employee subject to layoff.

14. Carrie Binder's undisputed seniority date is August 31, 2007. At hearing, Ms. Binder challenged Daniel Fong's relative seniority above her contending that his August 31, 2001 seniority date was not correct. The District offered credible documentary evidence rebutting Ms. Binder's contention. The District correctly identified Ms. Binder as an employee subject to layoff.

15. August 28, 2009 is the undisputed seniority date for both Stacy Johnson and Rachelle Carman. Both Ms. Johnson and Ms. Carmen challenged their relative seniority on the seniority list contending that unidentified colleagues told them that Darrel Turner, with a September 2, 2005 seniority date, and Gregory Huysman, with a September 3, 2006 seniority date, both took leaves of absence and then returned to the District. Neither Ms. Johnson nor Ms. Carmen offered any credible evidence to corroborate their hearsay testimony. Their challenge to their relative seniority on the seniority list is rejected. The District correctly identified Ms. Johnson and Ms. Carman as employees subject to layoff.

16. Lane Fleshman's undisputed seniority date is September 3, 2000. The position in which Ms. Fleshman currently teaches—physical and health impaired—is subject to elimination pursuant to the Resolution as set forth in Factual Finding 5. At hearing, Ms. Fleshman expressed concern about the District's future ability to meet the needs of physically impaired students as mandated by law. In determining whether the decision of a school board is reasonable as distinguished from fraudulent, arbitrary, or capricious, its action is measured by the standard set by reason and reasonable people, bearing in mind that such a standard may permit a difference of opinion on the same subject. (*Campbell v. Abbott* (1978) 76 Cal.App.3d 796, 808.) Reasonable minds can differ regarding the rationale and need for "flexibility" and for retaining "local control" at the expense of laying off significant numbers of the District's certificated personnel. No evidence that the Board acted in an arbitrary and capricious manner was presented. In the absence of such evidence, the Board's determination should not be disturbed. (*Ibid.*)

LEGAL CONCLUSIONS

1. Section 44949 provides in pertinent part as follows:

(a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefore.

[9] . . . [9]

2. Section 44955 provides in pertinent part as follows:

(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) Whenever in any school year the average daily attendance in all of the schools district for the first six months in which school is in session shall have declined . . . , whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, . . . and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certified and competent to render.

[9] . . . [9]

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis on needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish . . . a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group

(c) . . . [S]ervices of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. . . .

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrated a specific need for personnel to teach a specific course or course of study . . . and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

3. All notice and jurisdictional requirements set forth in sections 44949 and 44955 were met.

4. The services set forth in Factual Finding 5 are particular kinds of services which may be reduced or discontinued within the meaning of section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

5. A school district may reduce services within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce service' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

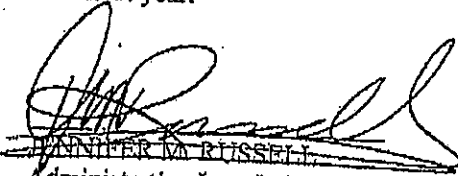
6. Cause exists pursuant to sections 44949 and 44945 to reduce the number of certificated employees of the District due to the reduction or discontinuation of the particular kinds of services set forth in Factual Finding 5. The District properly identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued.

7. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

ORDER

The Bellflower Unified School District may give notice to respondents Kristy Bailey, Carrie Binder, Rachelle Carman, Sylvia Chandler, Ryan Cherney, Angelica Contreras, Deborah Contreras, Karibeth Dethlefsen, Lane Fleshman, Tara Hefferly, Alice Jones, John Kevin Gaffnay, Kevin Greiving, Stacy Johnson, Erin Kelly, Debra King, Monique Kroese, Kiyomi Kwak, Jeremy Lughill, Michael Magnera, Karen Meisner, Amber Musick, Kristina Nemeo, Maie Rozales-Breig, and Daniel Shaheen that their services will not be required for the 2011-2012 school year.

Dated: May 4, 2011


~~JENNIFER M. RUSSELL~~
Administrative Law Judge
Office of Administrative Hearings

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7 Attorneys for Amicus Curiae
8 CALIFORNIA SCHOOL BOARDS ASSOCIATION

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SACRAMENTO

11 YVETTE ACQUISTO, et al.,
12 Petitioners/Plaintiffs,

13 v.

14 SACRAMENTO CITY UNIFIED
SCHOOL DISTRICT,
15 Respondent/Defendant.

Case No.: 34-2012-80001173

**DECLARATION OF KEITH J. BRAY IN
SUPPORT OF AMICUS BRIEF IN
SUPPORT OF RESPONDENT'S
OPPOSITION TO PETITIONERS' FIRST
AMENDED PETITION FOR WRIT OF
ADMINISTRATIVE MANDAMUS**

Date: March 8, 2013
Time: 1:30 p.m.
Dept.: 42
Judge: Hon. Allen H. Sumner

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19
20 **DECLARATION OF KEITH J. BRAY**

21 I, Keith J. Bray declare as follows:

22 1. I am the General Counsel of the California School Boards Association and
23 Director of the Education Legal Alliance. I make this declaration in support of CSBA's *Amicus*
24 *Curiae* Brief in Support of Respondent's Opposition to Petitioners' First Amended Petition for
25 Writ of Administrative Mandamus. If called upon to testify I could and would competently
26 testify to the following facts from my own personal knowledge.

27 2. CSBA is a collaborative group of 946 of the state's more than 1,000 school
28 districts and county offices of education. CSBA provides its members with a wide range of

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DECLARATION OF KEITH J. BRAY IN SUPPORT OF AMICUS BRIEF

1 services including policy analysis, legal advocacy, legislative representation, professional
2 development workshops and information services.

3 3. CSBA's Education Legal Alliance serves school boards in a variety of ways,
4 including helping to ensure that local school boards retain the authority to fully exercise the
5 responsibilities vested in them by law to make appropriate policy and fiscal decisions for their
6 local educational agencies. The Alliance represents its members by addressing legal issues of
7 statewide concern to school districts. The Alliance's activities include joining in litigation where
8 the interests of public education are at stake.

9 4. As a recent example of CSBA's work on behalf of its members, CSBA
10 participated in the National School Boards Association's 40th Federal Relations Network
11 ("FRN") Conference in Washington, DC. The conference brought together over 700 board
12 members from across the country to lobby Congress on matters of national concern to school
13 boards. CSBA was involved in developing NSBA's national platform, organizing and preparing
14 California's FRN delegation, and joining California board members in their visits to
15 congressional leaders. An area highlighted by NSBA at the conference was legislation designed
16 to re-affirm, at the federal level, the essential role of local school boards in developing the
17 educational programs for their students.

18 5. As the General Counsel, I am responsible for giving professional legal counsel to
19 CSBA leadership and management. I oversee the legal department programs, services and
20 activities, and provide legal and strategic advice regarding all legal matters affecting the
21 association. As such, I am fully familiar with the issues of pressing statewide concern to our
22 member districts. Just as local control has been identified as an issue of national concern to school
23 boards, it is an issue of significant concern at the state level.

24 6. Local boards of education are made up of elected officials who have the authority
25 and responsibility to establish their district's mission and goals, organization and structure,
26 budget and budget priorities and education program. They are also involved in setting policy to
27 guide the district in all day-to-day operations from health and safety, to transportation to human
28 resources and facility management.

1 **PROOF OF SERVICE**

2 I am employed in the County of West Sacramento, California. I am over the age of 18 years and
3 not a party to this action. My business address is CSBA/Education Legal Alliance, 3251 Beacon
4 Boulevard, West Sacramento, CA 95691.

5 On February 21, 2013, I served the following document(s):

6 **Request for Leave to File Amicus Curiae Brief in Support of Respondent Sacramento City**
7 **Unified School District's Opposition to Petitioners' Petition for Writ of Administrative**
8 **Mandate; California School Boards Association's *Amicus Brief* in Support of Respondents**
9 **opposition to Petitioner's First Amended Petition for Writ of Administrative Mandamus;**
10 **Request for Judicial Notice in Support of Amicus Brief in Support of Respondent's**
11 **Opposition to Petitioner's First Amended Petition for Writ of Administrative Man;**
12 **Declaration of Keith J. Bray in Support of Amicus Brief in Support of Respondent's**
13 **Opposition to Petitioners' First Amended Petition for Writ of Administrative Mandamus:**
14 ***Acquisto et al. v. Sacramento City Unified School District, Sacramento County Superior***
15 **Court, Case No. 34-2012-80001173,**

16 (BY MAIL) I caused a copy of said document to be placed in a sealed envelope, and
17 placed the same with the firm's mailing room personnel for mailing in the United States
18 mail at West Sacramento, California in accordance with the firm's ordinary practices, and
19 addressed to the interested parties below:

20 (BY PERSONAL SERVICE) I caused a copy of said document to be hand delivered to the
21 interested parties at:

22 (BY FACSIMILE) I caused a copy of said document to be sent via facsimile transmission
23 to the interested parties at:

24 (BY OVERNIGHT MAIL) I caused a copy of said document to be sent via overnight mail
25 to the parties listed below:

26 Gregory A. Wedner
27 Sloan R. Simmons
28 LOZANO SMITH, LLP
One Capitol Mall, Suite 640
Sacramento, CA 95814
Attorneys for Respondent/Defendant
Sacramento City Unified School District

Peter D. Nussbaum
Jeffrey B. Demain
Anne N. Arkush
ALTSHULER BERZON LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Attorneys for Petitioners/Plaintiffs
Yvette Acquisto et al.

29 I declare under penalty of perjury under the laws of the State of California that the foregoing is
30 true and correct. Executed on February 21, 2013 in West Sacramento, California.

31 
32 Anita Ceballos