COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

GOVERNING BOARD OF THE VENTURA UNIFIED SCHOOL DISTRICT, Respondent and Appellant, v. EDWARD CAHOON, Petitioner and Respondent.	Court of Appeal No. B207649 Superior Court No. 56-2007-00304615-CU-WM-VTA

Appeal from Superior Court of Ventura
Honorable Vincent J. O'Neill

APPLICATION OF CALIFORNIA SCHOOL BOARDS ASSOCIATION EDUCATION LEGAL ALLIANCE FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT/APPELLANT VENTURA UNIFIED SCHOOL DISTRICT; STATEMENT OF INTEREST; AMICUS CURIAE BRIEF

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENTS

Pursuant to California Rules of Court, rule 8.200(c), the California School Boards Association Education Legal Alliance respectfully requests permission to file the attached amicus curiae brief in support of Respondent and Appellant's Appeal from the Superior Court of California, County of Ventura in the above-captioned matter.

THE AMICUS CURIAE

The California School Boards Association ("CSBA") is a California non-profit corporation. It is a member-driven association composed of nearly 1,000 K-12 school district governing boards and county boards of education throughout California. The CSBA supports local school board governance and advocates on behalf of school districts and county offices of education. As part of CSBA, the Education Legal Alliance (the "Alliance") 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. The Alliance represents approximately 800 CSBA members by addressing legal issues of statewide concern to school districts. The Alliance's activities include joining in litigation where the interests of public education are at stake.

INTEREST OF AMICUS CURIAE

The issue presented in this case involves the legal requirements applied to all school districts within California with regards to terminating

the employment of those convicted of controlled substance offenses. As a result, its resolution will have a direct and profound impact on the members of the CSBA and the Alliance. For these reasons, the Amicus Curiae has a substantial interest in the present matter.

NEED FOR FURTHER BRIEFING

The Amicus Curiae is familiar with the issues before this court and believes that further briefing is necessary to address matters not fully addressed by the parties' briefs, namely the immediate practical effect the Trial Court's ruling will have on school districts across the state, as well as the policy reasons for overturning the Trial Court's ruling.

CONCLUSION

For the foregoing reasons, the Amicus Curiae respectfully requests the court accept the accompanying brief for filing in this case.

Dated: January 30, 2009

Respectfully submitted,

BEST BEST & KRIEGER LLP

By: _____
JOSEPH SANCHEZ
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BRIEF OF AMICUS CURIAE IN SUPPORT OF VENTURA UNIFIED SCHOOL DISTRICT

I.
INTRODUCTION

The California Schools Boards Association (hereinafter "CSBA") represents nearly 1,000 K-12 school district governing boards and county boards of education (hereinafter referred to as "school districts") throughout California. These school districts strive to provide the best education for California's youth, including hiring qualified staff and faculty. In a time where school safety is at the center of the education debate, and school districts are required to follow complex legislative mandates, the CSBA endeavors to support its member districts with sound policy guidance and effective legal advocacy. The CSBA, along with all school districts in the state, looks to the law for guidance in establishing employment policies. It recognizes that, where there is clarity in the law, school districts can more easily draft employment policies and procedures that comply with the law and ensure the maintenance of safe school environments for students and staff alike.

For the above reasons, the CSBA and its Alliance urge the court to reject a reading of the California Education Code that disregards the clear and unambiguous language of the statutes therein. As explained below, the plain language of the Education Code[1] (1) provides clarity in the law; (2) allows school districts to establish efficient policies to appropriately deal with acknowledged drug offenders, and (3) corresponds with the school safety mandates set forth in the California Constitution and state and federal laws.

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[1] All future statutory references are to the California Education Code unless otherwise noted.

II.
ARGUMENT

A. APPLYING THE STATUTES ACCORDING TO THEIR PLAIN MEANING PROMOTES CLARITY

As Appellant, the Governing Board of Ventura Unified School District (hereinafter "Appellant"), explained in its opening brief, the plain language of Education Code sections 44009, 44836, and 45123 requires school districts to dismiss employees who plead nolo contendere to certain controlled substance offenses. (*See* Appellant's Opening Br, pp. 6-8.) First, Section 44009 defines the term "conviction," to include not only a plea or verdict of guilty, but also a plea of nolo contendere within the meaning of Sections 44836 and 45123. (Ed. Code § 44009.) Second, Sections 44836 and 45123 prohibit school districts from employing or retaining persons convicted of controlled substance offenses enumerated in Section 44011. (*See* Ed. Code § 44836(b) ["The governing board of a school district also shall not employ or retain in employment persons in public school service who have been convicted of any controlled substance offense as defined in Section 44011."]; Ed. Code § 45123(b) ["No person shall be employed or retained in employment by a school district, who has been convicted of a controlled substance offense as defined in Section 44011."].) When read in conjunction, the statutes mandate immediate dismissal of an employee who pleads nolo contendere to certain controlled substance offenses.

The CSBA and its Alliance support Appellant's argument in favor of applying the plain meaning of the statutes and urge the Court of Appeal to reverse the Trial Court's decision. Interpreting statutes according to their plain meaning avoids confusion and enforces the Legislature's intent. (*Miklosy v. Regents of University of California* (Cal. 2008) 44 Cal. 4th 876,

888 ["We begin with the statutory language because it is generally the most reliable indication of legislative intent [citation]."]; *see also Caminetti v. United States* (1917) 242 U.S. 470, 485 [holding that, so long as a law is constitutional, "the sole function of the courts is to enforce it according to its terms"].) Here, the Legislature has provided school districts with a definition of conviction. (Ed. Code § 44009.) Applying that definition enforces the Legislature's intent as evidenced by the plain meaning of Section 44009. In addition, it promotes clarity for school districts with respect to their legal obligations under the Education Code.

Consider the facts in the present case. Appellant's employment policy provides that certain employee behavior will result in dismissal rather than progressive discipline. [CT: 22 (citing Appellant's Procedures for Disciplinary Action and Appeal).] Being convicted of a controlled substance offense falls into this category. (*Ibid.*) Respondent pleaded nolo contendere to a controlled substance offense, and the Appellant gave him notice of his dismissal. He contested the dismissal. Thereafter, Appellant's Personnel Commission (hereinafter "Commission") held that, "[b]ased upon the language of Section 44009, the Commission finds that Cahoon's plea did constitute a 'conviction' of a drug offense and the District was legally obligated to terminate his employment." [CT: 56.] The Commission based its decision on the plain language of the laws set forth in the Education Code. It believed that any other outcome would violate the law. (*Ibid.* ["[T]he District was legally obligated to terminate [Respondent's] employment."].)

Under the Trial Court's decision, however, the Commission is prohibited from applying the definition of conviction set forth in Section 44009. Moreover, school districts must now act in a manner that is wholly inconsistent with plain language of the law. This causes confusion for

school districts attempting to draft and implement policies required under the Education Code. The Trial Court's decision penalizes Districts, such as Ventura, who adopted policies according to the plain language of Section 44009. Now, a school district that adopts such policies will find itself in violation of the law. This result is incongruous with the purpose of the Education Code in directing school districts in the implementation of employment policies and procedures. The Court can avoid confusion and promote clarity by reversing the Trial Court's decision and allowing school districts to continue to adopt policies according to the plain language of Sections 44009, 44836, and 45123.

The Trial Court's decision creates confusion where the Legislature has provided a definition of conviction applicable to school districts' staff and faculty. If the decision is upheld, school districts will be reluctant to rely on the plain language of the Education Code when making significant personnel decisions like the one in this case. Further, the resulting confusion makes it more difficult for school districts to implement their employment policies. For these reasons, the CSBA and its Alliance urge the Court of Appeal to overturn the Trial Court's decision, and, in so doing, promote clarity in the law.

B. THE TRIAL COURT'S DECISION WILL REQUIRE SCHOOL DISTRICTS TO ENGAGE IN TIME CONSUMING AND COSTLY ADMINISTRATIVE PROCEDURES TO DISMISS ACKNOWLEDGED DRUG OFFENDERS

In addition to causing confusion under the law, the Trial Court's decision will affect the necessary employment procedures currently required to dismiss an individual who pleads nolo contendere to a controlled substance offense. Upholding the decision will require school districts to undertake time consuming and potentially costly dismissal

procedures, and, ultimately, may result in maintaining the employment of a person who has been convicted of a controlled substance offense under the plain meaning of the law. Further, the Trial Court's decision has far reaching implications because it will apply to certificated as well as classified employees. As such, the CSBA and its Alliance urge the Court of Appeal to overturn the Trial Court's decision.

The following section explains how the Trial Court's decision will create an additional pre-termination fact-gathering burden for both classified and certificated employees because the record of the plea of nolo contendere is no longer sufficient evidence of wrongdoing. It further explains the additional burdens on the post-termination hearing process that may result in maintaining the employment of an acknowledged drug offender.

1. The Trial Court's decision places an additional pre-termination fact-gathering burden on school districts attempting to dismiss classified and certificated employees.

a. There will be Increased Pre-Termination Procedures for Classified Employees.

There are multiple steps involved in the dismissal of classified school district employees. Depending on the nature of the charges of misconduct, these procedures can often be time-consuming and costly. Under *Skelly v. State Personnel Board*, (1975) 15 Cal. 3d 194, 215, 124 Cal. Rptr. 14, 539 P.2d 774, the California Supreme Court held that, before a permanent public employee can be dismissed, the employer must provide certain procedural safeguards. These safeguards include (1) notice of the proposed action, (2) the reasons for the proposed action, (3) a copy of the charges and materials on which the action is based, and (4) the right to respond, either orally or in writing, to the authority initially imposing

discipline. (*Ibid.*) Classified employees are also entitled to an evidentiary appeal hearing in both merit and non-merit Districts prior to the termination being finalized. (*See* Ed. Code §§ 45113, 45305). Therefore, the employer must make sure that it has engaged in a detailed fact-gathering process so that the District can meet the notice requirements under *Skelly* and confirm that sufficient evidence is obtained in order to prevail at the termination hearing. Depending on the nature of the offense, significant legal fees can be incurred in this process.

While Appellant complied with the due process procedures discussed above, the burden on the District was minimal. Relying on the plain language of Sections 44009 and 45123, the District determined that Respondent's plea "constitute[d] a 'conviction' of a drug offense and the District was legally obligated to terminate his employment." [CT: 56.] Therefore, under these statutes, the record of Respondent's nolo contendere conviction constituted sufficient evidence to terminate his employment.

The plain language of Sections 44009 and 45123 allow school districts to efficiently and quickly dismiss classified employees convicted of certain drug offenses, including employees who plead nolo contendere, because the only evidence required is the record of conviction. However, under the Trial Court's interpretation of the Education Code, the record of a nolo contendere plea would no longer be sufficient to constitute a conviction under Section 45123. Therefore, to dismiss an employee who pleads nolo contendere, a school district must engage in a detailed fact-finding investigation to gather evidence regarding the employee's drug offense prior to terminating employment so it can meet the due process requirements discussed above. The success of this investigation would be contingent on the cooperation of law enforcement and any witnesses to the conduct which led to the nolo plea conviction, including potentially

unsavory characters who may have been involved in the drug related offense. This fact-finding process places an additional burden on school districts trying to dismiss employees who are acknowledged drug offenders.

b. There will be Increased Pre-Termination Procedures for Certificated Employees.

In addition, the Trial Court's decision extends to certificated employees since Section 44009 applies to both certificated and classified employees. (Ed. Code § 44009.) Sections 44836 (certificated) and 45123 (classified) require the immediate dismissal of an employee convicted of an enumerated controlled substance offense.[2] Under the Trial Court's decision, a plea of nolo contendere does not amount to a conviction for classified employees under Section 45123; therefore, it would likewise not amount to a conviction for certificated employees under Section 44836. Accordingly, the Trial Court's decision would extend to certificated employees who have pleaded nolo contendere to a controlled substance offense. As a result, the school districts may have to continue employing teachers and counselors who are acknowledged drug offenders.

Because the decision applies to certificated employees, school districts will be required to undertake extensive procedures prior to dismissing teachers and counselors who plead nolo contendere to controlled substance offenses. A school district can only dismiss a certificated

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[2] The language of Section 45123, dealing with classified employees, is similar to the language in Section 44836, dealing with certificated employees. (*Compare* Ed. Code § 44836(b) ["The governing board of a school district also shall not employ or retain in employment persons in public school service who have been convicted of any controlled substance offense as defined in Section 44011."] *with* Ed. Code § 45123(b) ["No person shall be employed or retained in employment by a school district, who has been convicted of a controlled substance offense as defined in Section 44011."].)

employee for one of the statutorily enumerated reasons, such as the conviction of a crime of moral turpitude or immoral or unprofessional conduct. (*See* Ed. Code § 44932.)[3] In general, this requires school districts to notify the employee in writing of the intent to dismiss, including specifying the acts giving rise to cause to terminate. (Ed. Code § 44934.) According to the plain language of Section 44009, the record of the plea of nolo contendere constitutes sufficient evidence to show cause. (Ed. Code § 44009 ["The record of conviction shall be sufficient proof of conviction of a crime involving moral turpitude..."].) Under the Trial Court's decision, however, the record is no longer sufficient because a nolo plea is not a conviction. Thus, a school district can no longer rely on a conviction of a crime of moral turpitude as a basis for dismissing the employee. Rather, it must determine whether one of the other enumerated grounds for dismissal

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[3] Under Section 44932, a classified employee may be terminated only for the following reasons:

> (1) Immoral or unprofessional conduct; (2) Commission, aiding, or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188 of the Statutes of 1919, or in any amendment thereof; (3) Dishonesty; (4) Unsatisfactory performance; (5) Evident unfitness for service; (6) Physical or mental condition unfitting him or her to instruct or associate with children; (7) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him or her; (8) Conviction of a felony or of any crime involving moral turpitude; (9) Violation of Section 51530 or conduct specified in Section 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947; (10) Knowing membership by the employee in the Communist Party; (11) Alcoholism or other drug abuse which makes the employee unfit to instruct or associate with children.

exists.

Establishing that a teacher or counselor has engaged in one of the other grounds for dismissal is a fact-intensive, time consuming process. In order to dismiss a certificated employee for engaging in immoral or unprofessional conduct, the school district must show a nexus between the conduct and the employee's fitness for the particular job. (*See Morrison v. State Board of Education,* (1969) 1 Cal.3d 214, 229 ["[T]he Board of Education cannot abstractly characterize the conduct in this case as 'immoral,' 'unprofessional,' or 'involving moral turpitude'...unless that conduct indicates that the petitioner is unfit to teach."].) The *Morrison* court proposed a seven-factor analysis to determine fitness: "(1) likelihood of recurrence of the questioned conduct; (2) extenuating or aggravating circumstances; (3) effect of notoriety and publicity; (4) impairment of teacher-student relationships; (5) disruption of the education process; (6) motive; and (7) proximity or remoteness in time of conduct." (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (Cal. App. 4th Dist. 1982) 135 Cal. App. 3d 278, 284 [citing *Morrison*].) Thus, under the Trial Court's decision, where a teacher has pleaded nolo contendere to a controlled substance offense, a school district may not dismiss that employee without engaging in the *Morrison* analysis.

Consider the outcome in the present case if Respondent had been a teacher or counselor within the District. The record of Respondent's plea of nolo contendere would be insufficient evidence to show unprofessional or immoral conduct. Therefore, the District would have to engage in a fact-finding mission to gather independent facts to prove not only that the employee committed the controlled substance offense, but also that the conduct reflected on the certificated employee's fitness to teach. For example, the school district would need to determine exactly what actions

the employee took, whether the police could provide a sufficient description of the conduct, and whether the school district might be required to seek out additional witnesses and information. Even if the school district is able to prove the drug-related conduct occurred, it may not be able to demonstrate the nexus required under *Morrison*. Thus, under this standard, a school district may be forced to place acknowledged drug offenders back into a classroom. This result seems absurd when the Legislature has determined that certificated and classified employees convicted of the drug crimes enumerated in Section 44011 are unfit to remain employed with a school district and must be terminated.

2. The Trial Court's decision will heavily burden school districts during post-disciplinary hearings for classified and certificated employees.

The Trial Court's decision will also affect the hearing procedure required when dismissing a certificated employee, making it more difficult to terminate employment of either classified or certificated employees who plead nolo contendere to controlled substance offenses. Both certificated and classified employees have post-disciplinary rights, including the right to an evidentiary hearing. (*Cleveland Bd. of Educ. v. Loudermill* (1985) 470 U.S. 532, 545-547, [105 S. Ct. 1487].) As such, a school district, through its personnel commission, is required to hold a hearing at the employee's request. Again, the record of the nolo plea would no longer be sufficient evidence to support dismissal, so the school district will be required to put on evidence of the employee's misconduct. As discussed above, this gives rise to numerous financial and evidentiary burdens for the school district and may ultimately result in continued employment of acknowledged drug offenders.

First, a school district may face difficulties in requiring witnesses to

appear. Importantly, although a school district may issue subpoenas, they have no real subpoena power. (*See John A. v. San Bernardino City Unified Sch. Dist.* (1982) 33 Cal. 3d 301, 317 ["The schools have no power of subpoena."].) Thus, there are no consequences if a witness fails to appear. Given the nature of drug offenses, the school district may need to call to testify convicted criminals or other individuals involved in the sale or distribution of drugs. With no consequences for failing to appear, it is unlikely that such individuals will come to the hearing. Further, if they do appear, the witnesses will bring an unsavory element into the school during the hearing. Under these circumstances, it possible for an employee to acknowledge a drug offense through a plea of nolo contendere, but it is impossible for the school district to dismiss him because it could not present evidence in the form of witnesses.

In sum, under the Trial Court's interpretation of the relevant statutes, school districts can no longer rely on the record of the nolo contendere plea to dismiss either classified or certificated employees. Rather, school districts must engage in a time consuming and potentially costly process that includes making pre-disciplinary findings and retaining lawyers to present evidence at post-disciplinary hearings. In the end, the Trial Court's decision may require school districts to maintain the employment of teachers, counselors and staff, even after they plead nolo contendere to controlled substance offenses either because they are unable to prevail at the administrative hearing or because the District finds the burden to dismiss the employee too difficult to overcome.

The trial Court's decision will set a precedent leading employees charged with one of the crimes enumerated under Section 44011 to plead nolo contendere so that they can potentially save their jobs. This is despite the fact that the Legislature has determined that the conduct to which the

employee is pleading nolo contendere renders him or her unfit to be employed by a school district.

C. THE PLAIN LANGUAGE OF THE STATUTES PROMOTES SAFE SCHOOL ENVIRONMENTS MANDATED BY FEDERAL LAWS AND THE CALIFORNIA CONSTITUTION

Every day, school district officials in California face myriad challenges, including providing safe school environments for our children. In fact, numerous state and federal laws stress the importance of school safety by mandating serious consequences for students who possess or sell controlled substances. Maintaining strict compliance with a statutory scheme that prohibits employing acknowledged drug offenders best serves the public interest in school safety.

The California Constitution provides in its Victim's Bill of Rights that "[a]ll students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful." (Cal. Const. art. 1 § 28(c).) This constitutional provision mandates that all school districts provide safe environments for students and staff alike. Although it does not create a private right of action, it is the foundation for numerous school safety provisions enacted by the Legislature. (*Clausing v. San Francisco Unified Sch. Dist.*, (1990) 221 Cal. App. 3d 1224, 1237.) For example, the Legislature requires every school district in the state to implement a school safety plan. (*See* Cal. Ed. Code § 32280 *et seq.*) Such plans must include "local law enforcement agencies, community leaders, parents, pupils, teachers, administrators, and other persons who may be interested in the prevention of campus crime and violence." (*Ibid.*)

In addition to California's constitutional provisions, numerous Federal laws mandate school safety. When the federal government enacted

the No Child Left Behind legislation, it established the Safe and Drug-Free Schools and Communities Act in 2002. (20 U.S.C. § 7101 *et seq.*) The Act endeavors to

> ...support programs that prevent violence in and around schools; that prevent the illegal use of alcohol, tobacco, and drugs; that involve parents and communities; and that are coordinated with related Federal, State, school, and community efforts and resources to foster a safe and drug-free learning environment that supports student academic achievement.
>
> (*Ibid.* § 7102.)

States can apply for federal funds by submitting a comprehensive plan that shows how the state will foster safe and drug-free schools. (*Ibid.* § 7113.) The California Department of Education's website provides detailed information explaining its efforts to comply with the Act. (*See* Cal. Dept. Ed., *Safe and Drug-Free Schools and Communities Act* < http:// www.cde.ca.gov /ls/he/at/sdfsc.asp> [as of January 8, 2009].) Because "[y]outh development is essential to ensure that all students achieve academically," the programs funded under the Act educate students on a variety of drug-related issues, including "[t]eaching students that most people do not illegally use drugs." (Cal. Dept. Ed., *Safe and Drug-Free Schools and Communities Act Fact Sheet* < http://www.cde.ca.gov/ ls/he /at/safedrugfree.asp> [as of January 8, 2009].)

In addition, the Federal Gun Free Schools Act, conditions receipt of federal funding on compliance with the Act, which requires expulsion of students who possess firearms. (20 U.S.C. § 7151) In accordance with the Federal Gun Free Schools Act, California's Legislature adopted laws that recommend the expulsion or suspension of not only students who possess

firearms, but also students who possess drugs. (*See* Ed. Code § 48915) [prohibiting students from possessing controlled substances and fire arms]; *see also* California Dept. of Ed., *Zero Tolerance* <http://www.cde.ca.gov/ls/ss/se/zerotolerance.asp> [as of January 8, 2009] [explaining that, in fulfilling the mandates under the Federal Gun Free Schools Act, California also extends zero tolerance to controlled substances].) Section 48915 requires the principal or superintendent of schools to recommend expelling students for unlawful possession of drugs[4] unless he or she finds expulsion inappropriate, due to the particular circumstance." *Ibid.*[5] Further, the school board "shall" expel students who engage in selling controlled substances. (*Ibid.* § 48915(d).) Under federal mandates, the California Legislature has enacted legislation and adopted programs emphasizing the correlation between school safety and drug-free schools.

Lastly, the United States Supreme Court recognizes the "special characteristics of the school environment." (*Tinker v. Des Moines Independent Community School Dist.,* 393 U.S. 503, 506 (1969); *see also Morse v. Frederick* (2007) 127 S. Ct. 2618, 2622 [recognizing that "schools may take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use."]; *Bd. of Educ. v. Earls* (2002) 536 U.S. 822, 830 ["Fourth Amendment rights . . . are

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[4] Unlawful possession occurs when a student possesses one of numerous controlled substances listed in Health and Safety Code section 11053 *et seq.* (Ed. Code § 48915.) These include but are not limited to opiates, opiate derivatives, marijuana (to the extent prohibited under Section 48915), opium, cocaine, stimulants, depressants, or hallucinogenic drugs. (*See* Health and Safety Code §§ 11054-11058.)

[5] Some schools eliminate the principal's discretion. (*See T.H. v. San Diego Unified School Dist.* (2004) 122 Cal. App. 4th 1267 [upholding a district policy that required principal's to recommend expulsion for offenses including "furnish[ing], selling[ing], or possess[ing] an amount of an identified controlled substance determined to be for more than personal use"].)

different in public schools than elsewhere; the 'reasonableness' inquiry cannot disregard the schools' custodial and tutelary responsibility for children."] [internal citations omitted].) While the Court's decisions focus on the rights of students at the school, they underscore the need for schools to provide safe, drug-free learning environments for children.

With these pieces of legislation and Supreme Court decisions in mind, the CSBA and its Alliance urge the Court of Appeal to consider the impact of the Trial Court's decision on school safety. Recall, the Trial Court's decision applies to teachers and counselors, as well as staff. (*See supra*, section II.) If upheld, the decision prevents school districts from immediately dismissing a teacher who pleads nolo contendere to a controlled substance offense. Instead, the school district must undertake the time consuming investigative and hearing processes previously described—engaging in fact-gathering missions, issuing subpoenas, and calling witness. As a result, school districts may ultimately continue employing an acknowledged drug offender. This outcome stands in stark contrast to Section 48951, which requires school districts to expel students for some drug-related offenses, regardless of any arrest or conviction. (*See*, *supra*, Ed. Code § 48915(c).) It is incongruous to expel student drug offenders but retain employee drug offenders, particularly given the important contribution to school safety made by teachers, counselors, and staff. Recognizing the special characteristics of the school environment only serves to strengthen the CSBA's previous arguments. The Court of Appeal should not overlook the impact the Trial Court's decision will have on maintaining safe and drug-free schools.

The CSBA and its Alliance urge the Court of Appeal to reverse the Trial Court's decision. Doing so will maintain clarity in the law and allow for the efficient dismissal of employees who plead nolo contendere to a

controlled substance offense. In addition, such a decision will comport with the school safety mandates established in the California Constitution, as well as numerous federal and state laws.

III.
CONCLUSION

For the reasons stated above, the decision of the Trial Court should be reversed.

Dated: January 30, 2009

Respectfully submitted,

BEST BEST & KRIEGER LLP

By: _____
JOSEPH SANCHEZ
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CERTIFICATE OF COMPLIANCE WITH WORD COUNT

Pursuant to Rule 14 of the California Rules of Court, I certify that the attached Amicus Curiae Brief is proportionally spaced, has a Times 13-point typeface, and contains 4,510 words.

Dated: January 30, 2009

JOSEPH SANCHEZ
MEGAN M. MOORE
Attorneys for Amicus Curiae
California School Boards Association
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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION	Court of Appeal Case Number: B207649
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APPELLANT/PETITIONER: Governing Board of the Ventura Unified School District RESPONDENT/REAL PARTY IN INTEREST: Edward Cahoon	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): ☒ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): Governing Board of the Ventura Unified School District

2. a. ☒ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest *(Explain):*
(1)	
(2)	
(3)	
(4)	
(5)	

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: January 30, 2009

Joseph Sanchez
(TYPE OR PRINT NAME)

▶ Joseph Sanchez
(SIGNATURE OF PARTY OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
APP-008 [Rev. January 1, 2009]

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PROOF OF SERVICE

I, Malia Hall declare:

I am over 18 years of age, employed in the County of San Diego, California, in which county the within-mention delivery occurred, and not a party to the subject cause. My business address is 655 West Broadway, 15th Floor, San Diego, California 92101. I served the foregoing brief, of which a true and correct copy of the document filed in the cause is attached, by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

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I then sealed each envelope and with the postage thereon fully prepaid, deposited each envelope in the United States mail at San Diego, California on the date set forth below. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 30, 2009, at San Diego, California.

Malia Hall

Malia Hall