

SCHOOLS ROCK

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Farmer Smith & Lane, LLP

presents *SCHOOLS ROCK*, a semi-annual publication of select recent judicial opinions that could significantly affect California schools and community colleges. Although the publication attempts to summarize the cases in detail, it should not be read as a legal opinion or as a complete guide.

Eviction of Nazi-Saluting Man from Council Meeting Found Constitutional; Council Members Entitled to Immunity

Plaintiff was ejected from a meeting of the Santa Cruz City Council and brought an action alleging violation of his First Amendment rights. In March of 2002, the presiding officer of the Council meeting ruled that a speaker's time had expired and that the portion of the meeting devoted to receiving oral communications from the public had ended. Plaintiff then directed a Nazi salute in the presiding officer's direction, which was intended as a criticism or condemnation of the ruling, and began to verbally challenge the council member's comments. Plaintiff was then evicted from the meeting.

In affirming the lower court's judgment that the evictions were reasonable and that the council members were entitled to immunity, the court of appeal noted that presiding officers have great discretion in enforcing reasonable rules for the orderly conduct of meetings. It stated that a council does not violate the First Amendment when it restricts public speakers to the subject at hand and a chair of a meeting may stop a speaker if his speech becomes irrelevant or repetitious. As

plaintiff's actions were aimed at protesting the good faith efforts of the Chair to enforce the Council's rules, the Council was not enforcing the rules in order to suppress a particular viewpoint. Therefore, the Council members were entitled to immunity when they reasonably acted on the belief that disruptive behavior was occurring and was fostered by the Nazi salute. (*Norse v. City of Santa Cruz*, 586 F.3d 697 (9th Cir. November 3, 2009)).

District's Additional Certification Requirement Does Not Violate Law on Teacher's Credentialing or Terminating Tenured Teachers

State law requires that students who are not fluent in English be taught by teachers who are specially certified to teach them. In addition, federal law requires school districts to ensure that English learners have equal access to all school programs. Ripon Unified School District adopted a rule that required all teachers to get the certification and that failure to comply would result in termination. An agreement was entered into between the District and the teachers' union to impose the certification requirement and pay for the necessary training. Plaintiff was a tenured music teacher at Ripon High School who refused to get the certification. The trial court authorized the District to proceed with terminating the music teacher.

In affirming, the court noted the dilemma faced by the District. Neither denying a student the opportunity to take the music class nor risking sanctions for assigning students to non-certified teachers was found to be a viable option for the District. The court found that the requirement did not affect the validity of plaintiff's teacher credential. The credential allows her to teach music, not guarantee her

employment, tenure, or preempt the District from conditioning the teacher's employment to teach music. The District merely modified the terms of plaintiff's employment, not the authority granted her under her credential. State credentialing law does not prevent school district from requiring a teacher to satisfy additional certification requirements in order to continue employment.

Furthermore, the court noted that firing plaintiff for failing to get the certification did not violate Education Code § 45033, which prohibits a school district from reducing a tenured teacher's salary for failing to meet additional education requirements imposed by school districts. It found that § 45033 applied only to continuing employees because the Legislature has enacted separate provisions governing dismissals of tenured teachers, such as Education Code §§ 44932 and 44933. There is no indication that § 45033 was intended to modify the statutory grounds for terminating a tenured teacher, one of which is the persistent violation of, or refusal to obey reasonable regulations prescribed by the District. The court concluded with the observation that the certification requirement was a matter reasonably related to hours, wages, and conditions of employment, and was an appropriate subject of negotiation. However, even if the requirement was not so related to hours, wages, or conditions of employment, the District still had the right to consult with the union on the requirement. Because it chose to negotiate rather than impose the requirement under its reserved authority, the District did not establish a violation of the Educational Employment Relations Act. The District only added a regulation, the persistent refusal of which would justify termination. (*Governing Bd. of Ripon Unified Sch. Dist.*, 177 Cal. App. 4th 1379 (3d Dist. September 29, 2009)).

Government Code's Maximum Cash Value Formula Applies to Contract and Tort Claims; Settlement Mediation With Opposing Party Is Not Protected by Brown Act's Closed-Session Exception

The Mira Costa Community College District entered into a settlement agreement with the Community College's former superintendent. This was in response to a controversy that arose when the superintendent began investigating alleged financial mismanagement. The District is governed by a seven-member Board of Trustees, three of which issued a report critical of the superintendent's role in the investigation. Later, at a public hearing, those same three Trustees again made negative comments about the superintendent.

Believing that there was a substantial threat of a lawsuit and the District being found liable, the District entered into settlement discussions with the superintendent. The discussion took place at a closed session of the board meeting at which a retired judge would help foster agreement between the parties. The judge never entered the boardroom where the closed session took place, but members would occasionally come out to speak with him. The amount that the superintendent would be paid to settle the potential dispute exceeded the maximum cash value formula found in Cal. Gov't Code §§ 53260-53261. The trial court dismissed the claimed Ralph M. Brown Act violations, saying that the "Board can properly deliberate and vote on a proposed settlement in closed session." In addition, the trial court held that § 53260 applied only to claims arising out of contract termination and did not prohibit payment of settlement amounts on a tort claim.

In reversing the lower court's judgment, the appellate court noted that, on its face, the statute's application is unqualified. It is not limited to any particular circumstance that would lead to the termination and settlement of the public employee's contract. It applies regardless of the underlying reasons for termination or the employee's legal claims he or she may possess at the time of termination. The court found that because §§ 53260-53261 set a cap on the District's legal exposure, any payment in excess of the amount provided for by the statute would violate the gift clause of the California Constitution, art. XVI, § 6. It would be similar to paying a wholly invalid claim.

In response to the alleged Brown Act violations, the appellate court stated that any exceptions to the Act's open meeting requirement were to be narrowly construed. It found nothing in the plain text of the Brown Act that authorized the practice of mediating disputes or discussing potential litigation with opposing parties and their counsel. The court found that it could be concluded that the judge was used as a "go-between" to conduct information gathering for settlement negotiations at the closed session. It stated that such fact finding was of the kind that must occur openly. The court found that the district violated the prohibition on using personal intermediaries to exchange facts in order to reach a collective agreement outside the public forum. (*Page v. MiraCosta Cmty. Coll. Dist.*, 180 Cal. App. 4th 471 (4th Dist. Nov. 23, 2009)).

Non-Disabled Person Has Standing to Sue under Disability Laws

Plaintiff was a Resource Specialist Program teacher for students with disabilities

who worked for the County Office of Education. She began to voice concerns that special education services provided by the county were noncompliant with federal and state law. Plaintiff then filed a class action discrimination lawsuit to address those concerns and claimed that as a result, she was constructively discharged by the county. The trial court granted a motion to dismiss holding that Plaintiff did not have standing to sue under either the Rehabilitation Act of 1973 or Title II of the Americans with Disabilities Act.

In reversing the trial court's judgment, the Ninth Circuit found that the anti-retaliation provision of the Rehabilitation Act grants standing to non-disabled persons who are retaliated against for attempting to protect the rights of the disabled. The Act uses all inclusive phrases which establish rights and remedies for "any person" aggrieved under the Act and do not require the protected individual to have any close relationship to a disabled person. The court found such an interpretation consistent with the observation that the disabled may need assistance with the vindication of their rights. This line of reasoning was also found to apply equally to claims under Title II of the Americans with Disabilities Act and Plaintiff was found to have standing under either Act. (*Barker v. Riverside County Office of Educ.*, 584 F.3d 821 (9th Cir. October 23, 2009)).

School District's Reorganization Triggers Superintendent's Right to Invoke Special Powers under Education Code

Pursuant to a ballot measure in 2007, the Grant Joint Union High School District (Grant) was to merge with three smaller elementary school districts to create the Twin

Rivers Unified School District (Twin Rivers). Grant's fiscal and policy advisor believed that the merger would affect some Grant administrators with vested employment rights and that they would be entitled to one or two years compensation at their current salary levels regardless of whether they were retained by Twin Rivers. A severance package plan was developed and was adopted by Grant. However, the County Superintendent informed Grant that his office was going to conduct an audit under Education Code §§ 1241.5 and 42636 to investigate possible illegal fiscal practices that might result from implementing the severance package plan. The Superintendent said his office would not authorize payroll runs to implement the new plan until the investigation was completed. A letter was then issued by his office announcing that the severance package plan would be stayed and requests for payroll warrants to implement it would be rescinded because the plan was inconsistent with Twin River's ability to meet its obligations for the next fiscal year.

Affirming in part and reversing in part, the appellate court agreed that the case was not moot. The ultimate issue was whether the Superintendent abused his discretion in refusing to approve the payroll warrants necessary to carry out the severance package plan. By issuing the stay letter, the Superintendent had exercised his discretion and thus engaged in acts that were reviewable for abuse of discretion.

The appellate court did not agree with the notion that the Superintendent had to comply with all the procedural aspects of Education Code § 42127.6(a)-(d) before he has the power to stay or rescind under §42127.6(j). It stated that to read the statute differently would render subsection (j) unnecessary. Also, the

practical aspects of reorganizing a district require more responsive oversight procedures rather than the cumbersome, complex ones put forth under § 42127.6(a)-(d). Finally, the legislative history of the statute show that §42127.6(j) was created to give a quick and effective way to stop outgoing school districts from engaging in wasteful spending. Therefore, it is the reorganization itself that is the triggering event for a superintendent to exercise his special powers. In ruling on whether the Superintendent had abused his discretion, the court found that the stay order was not arbitrary, capricious, or entirely without evidentiary support. The Superintendent's decision was based on letters by Twin Rivers administrators stating that the severance package plan would have negative effects on the financial condition of the new district. (*Polster v. Sacramento County Office of Educ.*, 180 Cal. App. 4th 649 (3d Dist. December 22, 2009)).

Under Financial Hardship Program, Available Funds Must Include All Money Designated for Construction Purposes Regardless of Which Account the Money was Deposited Into

A dispute arose between the Val Verde Unified School District (Val Verde) and the State over construction costs for school facilities. Val Verde was a participant in the Financial Hardship Program, which allowed the State Allocation Board (SAB) to adjust the amount of local money required for a local school construction project. While participating in the program, Val Verde received 100 percent state funding for construction on school facilities on all but three projects. However, the Office of Public School Construction (OPSC) discovered that during the time Val Verde was a participant in the Financial Hardship program, Val Verde

had approximately \$89,234,421 in net proceeds from Certificates of Participation (COP) it had issued. The SAB determined that Val Verde had gained an improper funding advantage of \$11,830,232 due to its lack of disclosure of the COP proceeds and that those proceeds would be counted against Val Verde when calculating how much local money was required for local school construction projects. The trial court found no abuse of discretion by SAB and that the regulations did not violate the equal protection clause.

Affirming, the appellate court noted that the statutory scheme was set up to assist school districts that do not have enough funds for construction projects regardless of which account the construction money was deposited into. Thus, available funds include all money designated for construction purposes regardless of which account it was deposited into. Further, the language of the regulation provides that any proceeds derived after admittance into the Financial Hardship Program shall not be considered encumbered and several of the COPs were issued after Val Verde was admitted into the program. The regulation explicitly provides that proceeds from COPs are included in the calculation. For similar reasons, the court found that the SAB did not exceed its authority in defining what constitutes “available funds.”

After dismissing Val Verde’s facial constitutional challenge for not relating to the text of the statute, the court then turned to the constitutionality of the state’s application of the statute. It found that the statute did not explicitly discriminate between separate or distinct groups of people because every school district has the opportunity to apply for financial hardship status. The district also failed to show that there was a

disproportionate impact on a protected group. In addition, even if there was a disparate impact, Val Verde made no showing of a discriminatory purpose. In fact, the court found that the statute itself negates any such claim of discriminatory intent. The state’s obligation to prevent a school district’s budget problems from negatively impacting student’s constitutional right to educational equality does not mean that the state is limited to simply focus on a capital facility account and ignore capital facility funds that are deposited in a general account. (*Sanchez v. State*, 179 Cal. App. 4th 467 (4th Dist. November 19, 2009)).

Send your questions or comments to:

Craig E. Farmer, Esq.

CFarmer@farmersmithlaw.com or

Emmanuel R. Salazar, Esq.

ESalazar@farmersmithlaw.com

FARMER SMITH & LANE, LLP

3620 American River Drive, Suite 218

Sacramento, CA 95864

Tel: (916) 679-6565 • Fax (916) 679-6575