

# 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.

### **District's Implementation of Salary Schedule Violates Uniformity Requirement**

In a collective bargaining agreement, defendant school district and plaintiff teachers' association agreed to a compressed salary schedule. After the district implemented the agreement, all teachers who had 17 to 20 years of experience were moved into step 17, which ultimately resulted in less experienced teachers moving up the salary ladder at a rate of one step per year, while more experienced teachers were regressed to step levels below their number of years of experience. Individual teachers and the association filed a petition for a writ of mandate against the district claiming that the district's actions violated the uniformity requirement of section 45028 of the Education Code and ordered the district to restore the experience credit that plaintiff teachers had lost due to the implementation of the new schedule. The trial court agreed, and the district appealed.

Affirming, the appellate court focused on the proper interpretation of section 45028 which mandates that when teacher salary schedules operate on the basis of education and experience they must be wholly uniform, conforming to one principle, standard or rule.

A "uniform" salary schedule means that teachers will be compensated invariably according to seniority and education. A system in which one class of teacher must work one, two, or three years longer than another group with the same course training to obtain the same merit salary increases fails to grant credit for experience and training uniformly. By artificially limiting the more experienced teachers' advancement up the salary ladder, the restructured schedule treated them as second class employees, requiring them to work longer than other teachers with the same training to obtain the same merit increases. The court held affected teachers were entitled to have their step levels readjusted so that the new schedule compensated them uniformly according to experience and training. (*Adair v. Stockton Unified School Dist.* (May 19, 2008) 162 Cal. App. 4th 1436.)

### **District Not Responsible For Safety of Students Outside School Premises**

In January 2002, an unlicensed motorist killed one child and injured others as they crossed a city street on their way to school. The surviving pedestrians and family members brought suit against the city and the school district and alleged that their negligence contributed to the accident. The trial court granted the defendants' motion for summary judgment concluding that the intersection did not create a dangerous condition (Gov. Code, § 830.2) and that the school district was not responsible for the safety of students outside school premises (Ed. Code, § 44808).

Plaintiffs appealed, relying on Vehicle Code § 21368 which provides that whenever a

marked pedestrian crosswalk has been established in a roadway contiguous to a school building or the grounds thereof, it shall be painted or marked in yellow as shall be all the marked pedestrian crosswalks at an intersection in case any one of the crosswalks is required to be marked in yellow. The appellate court disagreed with plaintiffs and affirmed. It found that the intersection was not contiguous to school grounds, based on the primary meaning of contiguous – physically touching – and thus the Vehicle Code § 21368 did not require demarcation in yellow paint and additional signage warning of a school crossing. It concluded that Ed. Code, § 44808, which endorses the common law principle that a school district is not legally responsible for accidents to students on their way to and from school, does not create general negligence liability and that the district was not responsible for the safety of students outside school premises. (*Cerna v. City of Oakland* (April 11, 2008) 161 Cal. App. 4th 1340.)

### **California Appeals Court Rehears Homeschooling**

On February 28th, a court of appeal ruled that parents who lack teaching credentials do not have the statutory or constitutional right to homeschool their children. The court held that California law requires parents to send their children to full-time public or private schools or have them taught by credentialed tutors at home. The decision stemmed from a child-dependency case involving parents who were referred to a county children and family services department over allegations that included physical and emotional mistreatment of the children by their father. The workers discovered during their investigation the

children were being homeschooled by their mother, who lacked a teaching credential. The father objected to his children being taught in school about evolution and homosexuality. Court-appointed lawyers for two of the children asked that the parents be ordered to enroll them in public school as a safeguard against future abuse. A juvenile court judge refused saying parents have an absolute constitutional right to teach their children at home. The appeals court rejected that proposition, but granted a motion for rehearing on March 25th after public outcry. On Monday, June 23rd the appeals court heard new arguments.

The court stated that the California Constitution does not mention homeschooling, and California laws do not mention homeschooling by name. However, according to section 48200 of the Education Code, enrollment and attendance in a public full-time day school is required for minor children unless: (1) The child is enrolled full-time in a private day school and actually regularly attends that private school (§ 48222); (2) The child is tutored by a person holding a valid state teaching credential for the grade being taught (§ 48224); or (3) One of the other few statutory exemptions to compulsory public school attendance applies to the child (for example, short-term child actors, the mentally gifted, or leaves of absence) (§ 48220 et seq.). The California Department of Education has allowed homeschooling as long as parents file paperwork with the state establishing themselves as a private school, hire credentialed tutors or enroll their children in independent study programs, but the department leaves most enforcement to local school districts. A decision is expected by late September. (*Jonathan L., et al. v. Sup. Ct. Los*

*Angeles County*, No. B192878 (Cal. Ct. App., filed Feb. 28, 2008, reh'g granted Mar. 25, 2008).)

### **Grand Jury Goes After Two School Systems**

On June 18th, a civil grand jury published a 99-page book including sharp criticism of two local school systems, Stockton Unified School District and San Joaquin Delta College. The jury alleges that school district officials misused public funds, attempted to conceal the misuse, hired consultants to perform work that should have been done by district employees, and forced the grand jury to use its subpoena power to get information.

The jury against the college board of trustees contends that it has wasted millions of taxpayer dollars, violated open government laws by discussing closed-session matters outside its meetings, should not have built a new campus, and lacked the capability to lead the school into the 21st century. Key recommendations for the school district include: (1) thorough, independent, annual audits so detailed that they prevent future misuse of funds; (2) restricting management's spending authority to a level that prevents abuse; (3) establishing a foundation to conduct fundraising activity on a district wide basis; and (4) public access to the school district records and accounting information to ensure transparency and restore public trust.

The District Attorney said it is unlikely his office would get involved unless there were criminal implications. "Mismanagement doesn't mean 'fraud' and 'embezzlement,'" he said.

Recommendations for the college included Board compliance with the Brown Act, further training on the Brown Act, and a Citizens' Bond Oversight Committee's supervision over all changes in projects selected for funding, project plans, or delays in construction. Each agency has uniformly dismissed the criticisms and the grand jury has given them ninety days to respond. (San Joaquin County Civil Grand Jury Report: Case #08-07 *Stockton Unified School District*, Case #12-06 *San Joaquin Delta College*, June 18, 2008.)

### **Grand Jury Urges District to Dump System of Assigning Students to Schools**

In a report released June 26th, a civil grand jury said the San Francisco Unified School District (SFUSD) should abandon its system of assigning students to schools and instead allow the students to attend their neighborhood schools calling the system "confusing, time-consuming, [and] alienating." The district's Student Assignment System uses a Diversity Index Lottery to enroll students entering new schools. The system bases enrollment on five race-neutral factors designed to create programs/grades where the students are different from each other based on the five factors: academic achievement status (e.g. pre-school attendance and standardized test scores), socioeconomic status (e.g. participation in CalWORKS, public housing, or free/reduced lunch programs), extreme poverty (e.g. a foster youth, or participation in public housing or homeless programs), home language, and academic performance rank of sending school (for non-kindergarten applicants.)

The grand jury criticized the system specifically for not efficiently diversifying the

schools, being too expensive to run, and driving families away from the district.

The district began the current student assignment system in 2002. The president of the School Board said discussions this fall will probably lead to a major change of the system. (San Francisco County Civil Grand Jury Report: *San Francisco Kindergarten Admissions – Back to the Drawing Board*, June 26, 2008.)

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