

CHAPTER I

INTRODUCTION - CALIFORNIA SCHOOL LAW

IMPORTANCE OF AMERICAN EDUCATION IN AMERICAN SOCIETY

Perhaps the most important function performed by state and local governments today is the provision of public education.¹ Education is an integral aspect of American society.² The welfare of our society depends on the wisdom of our fellow citizens, wisdom which is acquired through the acquisition of knowledge, skills and values which are communicated, in large part, through our public education system.³

A democratic society, by its nature, delegates the authority to make the most fundamental decisions to all citizens who choose to vote. Each citizen, whether well informed or not, has one vote. An election is meant to be a competition of ideas. A poorly educated electorate would be unable to distinguish between meritorious ideas and demagoguery. Without a well-educated electorate, democracy would always be in danger, threatened by demagogues who seek to seize power and deny democratic freedom once in power.

As early as the 1840's, Alexis de Tocqueville, in Democracy in America, noted that the education of the general population in America contributed greatly to the support of a democratic government.⁴

The importance of education was first recognized by the courts in Brown v. Board of Education.⁵ In Brown v. Board of Education, the United States Supreme Court declared segregated schools unconstitutional, stating:

“[Education] is a principal instrument in awakening the child to cultural values in preparing him for later . . . training and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. . . .

“Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities.”⁶

¹ Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686 (1954).

² Dewey, Democracy and Education (1916).

³ Cahn, Education and the Democratic Ideal (1979), p. 1-6.

⁴ De Tocqueville, Democracy in America (1945), p. 329.

⁵ 347 U.S. 483, 74 S.Ct. 686 (1954).

⁶ 347 U.S. 483, 493 (1954).

Since the United States Supreme Court's decision in Brown v. Board of Education, the role of American law in the form of judicial decisions and legislation has greatly increased. Once segregation was declared unconstitutional, other educational policies have been reviewed in legal terms and have been challenged in the courts. Such issues as prayer in school,⁷ compulsory attendance laws,⁸ aid to parochial schools,⁹ education of the handicapped,¹⁰ and student discipline,¹¹ to mention only a few issues, have been decided by the courts.

On January 8, 2002, a major legislative change in the role of the federal government in public education took place when President Bush signed the No Child Left Behind Act (NCLB) of 2001.¹²

The NCLB represents a historic change in the relationship between the federal government and the states with respect to public education. No longer will the federal government be just a funding mechanism supporting existing programs. The federal government will now be involved in setting the tone, direction and priorities of public education in every school in the United States. Through the funding of the Title I programs for disadvantaged students, the federal government will require all public schools (Title I and non-Title I schools) to set academic achievement levels, proficiency standards, and certification requirements for teachers that meet the requirements of the NCLB.

SOURCES OF LAW

There are a number of sources of law which affect public education. These include the common law, the United States Constitution, federal statutes, federal regulations, the California Constitution, California statutes, and California regulations. Each of these sources of law involves the three branches of government; judicial, legislative and executive. All three branches of government have an impact on public education.

The legal system in the United States evolved from the English common law. Common law is unwritten law which emerged from custom, decrees and judgments of the courts. The common law system is based on precedent followed in earlier decisions also known as the doctrine of stare decisis ("to abide by"). Stare Decisis means that once a court has resolved an issue the question is not revisited, except on rare occasion. An example of an exception to stare decisis is when the United States Supreme Court rendered its opinion in Brown v. Board of Education¹³ and overturned prior "separate but equal" precedent set by earlier cases.

While common law forms the historical basis for the United States legal system, the United States Constitution, upon its adoption, became the fundamental law of the land. All federal statutes and regulations, state constitutions, statutes and regulations must be consistent

⁷ School District of Abington v. Schempp, 374 U.S. 203, 83 S.Ct. 1560 (1963).

⁸ Wisconsin v. Yoder, 406 U.S. 205, 92 S.Ct. 1526 (1972).

⁹ See, for example, Wolman v. Walter, 433 U.S. 229, 97 S.Ct. 2593 (1977); Meek v. Pittenger, 421 U.S. 349, 95 S.Ct. 1753 (1975); Lemon v. Kurtzman, 403 U.S. 602, 91 S.Ct. 2105 (1971).

¹⁰ Pennsylvania Association for Retarded Children v. Pennsylvania, 343 F.Supp. 279 (E.D. Pa. 1972); Mills v. Board of Education, 348 F.Supp. 866 (D.D.C. 1972).

¹¹ Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729 (1975).

¹² 20 U.S.C. section 6301, et seq.

¹³ 347 U.S. 483 (1954).

with the United States Constitution as interpreted by the United States Supreme Court. The United States Constitution is the source of American law and the Constitution created the three branches of the federal government, each of which has a role to play in public education.

Although the United States Constitution does not specifically mention education, education related litigation generally involves issues of state law, as well as constitutional issues involving the First, Fourth, Fifth and Fourteenth Amendments of the United States Constitution.

The First Amendment states:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

There has been a tremendous amount of education litigation involving the meaning of the Establishment Clause, Free Exercise Clause, Free Speech Clause and Free Press Clause of the United States Constitution. Many of these cases are discussed in later chapters of this text. The Fourth Amendment’s prohibition on the unreasonable searches and seizures, the Tenth Amendment’s reserving of functions to the states, and the Eleventh Amendment’s limits on the judicial power of the United States, have been litigated in the education context as well. The Fourteenth Amendment’s Equal Protection Clause has been litigated in Brown v. Board of Education and in numerous cases involving school segregation. The Due Process Clause of the Fourteenth Amendment has been litigated in the context of student discipline as well as employee rights.

The enactment of federal statutes has also had a dramatic impact on public education. The passage of the Civil Rights Act of 1964¹⁴, the Individuals With Disabilities Education Act (IDEA)¹⁵ and the No Child Left Behind Act¹⁶ are prime examples of federal statutes which have dramatically impacted public education. Many of these federal statutes are enacted under the Spending Clause of the United States Constitution under which the federal government may condition the appropriation of federal funds to a state. If a state accepts federal funds, state and local educational officials are required to comply with whatever conditions Congress has attached to the legislation.¹⁷

Under the Spending Clause, the courts have held that even though the federal government is a government of limited enumerated powers, Congress may attach conditions on the receipt of federal funds to further broaden policy objectives by requiring state and local governments to comply with the federal, statutory and administrative directives which may be beyond Congress’ enumerated powers.¹⁸ In 1987, in South Dakota v. Dole, the United States Supreme Court upheld Congress’ conditioning of federal highway funds on a state’s enactment of a minimum

¹⁴ 42 U.S.C. Section 2000e-2.

¹⁵ 20 U.S.C. Section 1400 et seq.

¹⁶ 20 U.S.C. Section 6301 et seq.

¹⁷ See Article I Section 8 Clause 1 of the United States Constitution which states, “That Congress shall have power to lay and collect taxes, duties, impost, and excises, to pay the debts and provide for the common defense and general welfare of the United States. . .”

¹⁸ See Fullilove v. Klutznick, 448 U.S. 474, 100 S.Ct. 2758 (1980).

drinking age of 21.¹⁹ The court broadly interpreted the Spending Clause and held that it was sufficiently related to a federal program of safe interstate highways since differing state laws encouraged young people to travel on interstate highways to neighboring states to obtain liquor and to return under the influence of alcohol.

State constitutions form the basic law of the individual states. State constitutions restrict the powers of state legislatures. Specific provisions of the California Constitution are discussed in Chapter 2 of this text.

The most abundant source of law affecting public schools are statutes enacted by state legislatures such as the California Education Code. State legislatures have broad authority over public school systems subject to the limitations of the United States Constitution, federal statutes and state constitutions.

In addition, the executive branch of the federal government, in particular, the United States Department of Education, has promulgated regulations to carryout federal statutes. These regulations are found at Title 34 of the Code of Federal Regulations.

In California, the State Board of Education has promulgated state regulations to carry out the provisions of the Education Code. These regulations are found in Title V of the California Administrative Code.

THE JUDICIAL SYSTEM

As one of the coequal branches of government, the judicial branch interprets the law and adjudicates disputes. The federal court system is made up of the United States Supreme Court, the United States Circuit Courts of Appeal, and the United States District Courts.

The federal courts have limited jurisdiction over education issues. Federal jurisdiction is created by acts of Congress. Generally, in the education context, access to the federal courts is available when there is a dispute over a provision of the United States Constitution, a federal statute, or a federal regulation. Disputes within the jurisdiction of the federal courts are initiated in the United States District Courts. Each state contains at least one or more federal trial courts. California has four federal trial courts: the Northern District, Eastern District, Central District and Southern District.²⁰

Dissatisfied litigants may appeal a judgment of a United States District Court to the U.S. Circuit Courts of Appeal. The country is divided into eleven numbered federal Circuit Courts of Appeal plus the District of Columbia Circuit. These courts decide most of the appeals in the federal court system and are commonly referred to as the circuit courts or the United States Circuit Courts of Appeal. Each circuit court's decisions are binding and precedent setting within that circuit and other circuit courts may, but are not required, to follow the decisions of another circuit court.

¹⁹ 483 U.S. 203, 107 S.Ct. 2793 (1987).

²⁰ The Northern District is based in San Francisco, the Eastern District is based in Sacramento, the Central District is based in Los Angeles and the Southern District is based in San Diego.

The jurisdiction of the United States Circuit Courts of Appeal is as follows:

1. First Circuit – Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island.
2. Second Circuit - Connecticut, New York, Vermont.
3. Third Circuit – Delaware, New Jersey, Pennsylvania, Virgin Islands.
4. Fourth Circuit- Maryland, North Carolina, South Carolina, Virginia, West Virginia.
5. Fifth Circuit – Louisiana, Mississippi, Texas.
6. Sixth Circuit – Kentucky, Ohio, Michigan, Tennessee.
7. Seventh Circuit – Illinois, Indiana, Wisconsin
8. Eighth Circuit – Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota.
9. Ninth Circuit – Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington.
10. Tenth Circuit – Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming.
11. Eleventh Circuit – Alabama, Florida, Georgia.
12. District of Columbia Circuit – Washington, D.C.

Each state has its own judicial system established by its constitution and legislature. In California, the trial court of general jurisdiction is the Superior Court. There is a Superior Court in each of the fifty-eight counties of California. The decisions of the Superior Court are binding upon the parties before the court only.

Appeals from the Superior Court are heard by the California Court of Appeal. There are six Courts of Appeal in California.²¹ Published decisions rendered by the Courts of Appeal are precedent setting and binding statewide on all Superior Courts and Courts of Appeal.

Decisions of the Courts of Appeal may be appealed to the California Supreme Court. The seven member California Supreme Court is the court of last resort in issues involving matters of state law. Issues involving interpretations of the United States Constitution or federal statutes may be appealed to the United States Supreme Court from the California Supreme Court.

DEVELOPMENT OF THE EDUCATION CODE IN CALIFORNIA

In California, the trend toward increased legal intervention is evident from the proliferation of legislation relating to education enacted each year by the California Legislature. The Education Code in California is perhaps the most complex statutory scheme in California.

²¹ The First District Court of Appeal is based in San Francisco. The Second District Court of Appeal is based in Los Angeles. The Third District Court of Appeal is based in Sacramento. The Fourth District Court of Appeal is based in San Diego. The Fifth District Court of Appeal is based in Fresno, and the Sixth District Court of Appeal is based in San Jose.

The Education Code is replete with ambiguous and conflicting provisions. As Justice Mosk in a dissenting opinion observed:

“Both parties agree that it is difficult to reconcile sections of the Education Code. Apparently the code as a whole is a crazy-quilt product of well-meaning legislative attempts to accommodate the divergent views of teachers, school boards, parents and the public. To one looking for an answer in many circumstances, the result is like trying to peer through opaque glass.”²²

The development of the California Education Code has its roots in the development of statutory law in California. Following the admission of California into the Union in 1850, the Legislature at its first session enacted a statute which stated, “The Common Law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or the laws of the State of California, shall be the rule of decision in all the courts of this State.”²³ At that time, there were no codes, statutes, reports, digests or texts on California law.²⁴ However, it was not long before statutes were enacted. The first session of the Legislature enacted a total of 146 chapters establishing the structure of local government, establishing a system of taxation, regulating elections and other matters.²⁵

The Education Code, unlike the Civil Code and Penal Code, did not develop from the common law system established in England, but developed piecemeal from various provisions and laws enacted by the Legislature over about a one hundred year period.²⁶ The Education Code is not based on a prior code but is a collection of rules and regulations for the organization and administration of a system of education within California.²⁷ As the State grew from a small collection of farming and mining communities to the largest State in the Union, the statutory provisions relating to education have grown more numerous and complex.

The first California Constitution, the Constitution of 1849, established a State Superintendent of Public Instruction and a school fund.²⁸ Beginning in 1851, the Legislature passed a number of acts relating to education.²⁹ In 1872, the statutory provisions relating to education were consolidated under Title 3 of the Political Code.³⁰ Between 1872 and 1929, the Legislature enacted numerous uncodified provisions.³¹ As these provisions became more complex, it became increasingly difficult to administer these provisions.

In 1929, the Legislature created the California Code Commission.³² The Commission was charged with the responsibility of codifying all of the statutory law of the State of California. The Commission reviewed all the enactments of the past sessions of the Legislature, including the 1929 School Code (which was a separate volume) and the prior uncodified statutes

²² Taylor v. Board of Trustees, 36 Cal.3d 500, 510, 18 Ed.Law Rep. 749 (1984).

²³ Statutes of 1850, Chapter 95, passed April 13, 1850.

²⁴ Palmer and Selvin, The Development of Law in California, (1983), p. 28-29.

²⁵ Id., at 31.

²⁶ Kunzi, The California Education Code (1978), p. 1.

²⁷ Id., at 1-2.

²⁸ Const. 1849, Article IX.

²⁹ Kunzi, The California Education Code (1978), p.3.

³⁰ Kunzi, *supra*.

³¹ Id., at 4.

³² Stats.1929, ch. 750, p. 1427. Amended, Stats.1931, ch. 929, p. 1927.

relating to education and recommended the creation of an Education Code.³³ The result was the 1943 Education Code. The Education Code was again revised in 1959³⁴ and again in 1977.³⁵

THE “PERMISSIVE” EDUCATION CODE

Generally, these revisions did not result in substantive changes but were attempts to collect and codify provisions which had been enacted by the Legislature over the years. The major substantive change that has taken place in the development of the Education Code has been the so-called “permissive” code concept. In 1972, the California electorate approved the addition of Article IX, section 14 to the California Constitution. Article IX, section 14 states:

“The Legislature shall have power, by general law, to provide for the incorporation and organization of school districts and community college districts, of every kind and class, and may classify such districts.

“The Legislature may authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established.”

The Legislative Counsel’s analysis³⁶ explained the purpose of the amendment to the State Constitution as follows:

“Under the existing provisions of the Constitution, statutory authority is required to permit school boards to initiate and carry out programs or activities.

“This measure would amend the Constitution to authorize the Legislature, commencing July 1, 1973, to enact legislation to permit school boards to initiate and carry on any programs, activities, or to otherwise act in any manner, not in conflict with the laws and purposes for which school districts are established.

“Thus, the Legislature would not have to grant specific authority for a school board to carry out a particular activity, but could authorize school boards to carry out any activity if it is related to school purposes and is not prohibited by law.”

The Legislature then enacted Education Code sections 35160 and 72233, which are virtually identical.³⁷ Education Code section 35160 states:

³³ Kunzi, The California Education Code (1978), p. 6.

³⁴ Stats.1959, ch. 2, p. 595.

³⁵ Stats.1977, ch. 36, p. 81, ch. 37, 407.

³⁶ Legislative Counsel’s Analysis, Voter’s Pamphlet, p. 14 (1972).

³⁷ Stats.1974, ch. 1508.

“On and after January 1, 1976, the governing board of any school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established.”

The California Attorney General has stated that the enactment of Education Code section 35160 was intended by the Legislature to be a grant of general authority to school districts on matters related to school purposes.³⁸ Prior to the enactment of Article IX, section 14, school districts and community college districts had been traditionally characterized as agencies of limited authority which could exercise only those powers granted by statute.³⁹ The Attorney General noted that the passage of Article IX, section 14 significantly expanded the authority of school districts and community college districts. The Attorney General found that a community college district could not establish a mandatory student body fee without specific statutory authority because Education Code section 72289 required specific statutory authority. The implication was that in the absence of Education Code section 72289 requiring specific statutory authority, a community college district could impose such a mandatory fee under Section 72233. However, to do so in light of Section 72289 would create a conflict and Section 72233 specifically authorizes a community college district to act in any manner not in conflict with any law. The Attorney General found that Education Code section 35160 did not authorize the governing board of a high school district to regulate parking on a public street adjacent to a high school.⁴⁰ The Attorney General found that the regulation of parking on public streets came under the category of traffic control and was preempted by other laws which granted the authority to regulate parking to cities and counties.

The conclusions of the Attorney General discussed above were further reinforced by the Legislature when it repealed a number of Education Code provisions.⁴¹ The Legislative Counsel’s Digest explained the changes as follows:

“Legislation which became operative in 1976 authorized the governing board of any school district or community college district to initiate and carry on any program, activity, or to act otherwise in any manner which is not in conflict with, or inconsistent with, or preempted by, any law, and which is not in conflict with the purposes for which school districts and community college districts are established.

“However, the Education Code presently contains many provisions enacted prior and subsequent to such date that specifically prescribed the authority of any school district or community college district to act in initiating and carrying on programs or activities or taking other actions.

³⁸ 65 Ops.Cal.Atty.Gen. 146, 147-148 (1981).

³⁹ Yreka School District v. Siskiyou School District, 227 Cal.App.2d 666, 670 (1964); San Juan Teachers Association v. San Juan Unified School District, 44 Cal.App.3d 232, 250 (1974).

⁴⁰ 64 Ops.Cal.Atty.Gen. 146 (1981).

⁴¹ Stats.1981, ch. 471.

“This bill deletes many such prescriptive provisions thereby permitting governing boards to exercise authority with respect to the matters affected.”

The Legislature specifically declared its intent in repealing numerous sections of the Education Code as follows:

“The Legislature finds and declares that, in 1972, the people of the state adopted an amendment to Section 14 of Article IX of the California Constitution, which permits the Legislature to authorize the governing boards of school districts and community college districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established.

“It is the intent of the Legislature, in enacting this Act, to implement more fully, for the community colleges of California, the intent of the people in adopting the amendment of Section 14 of Article IX of the California Constitution. The Legislature further finds and declares that, in order to do so, it is necessary to amend or repeal many provisions of the Education Code.

“Whenever in this Act a power or duty of a community college district governing board is repealed or otherwise deleted by amendment, it is not the intent of the Legislature to prohibit the board from acting as prescribed by the deleted provisions. Rather it is the intent of the Legislature, that the community college district’s governing board shall have the power, in the absence of other legislation, to so act under the general authority of Section 72233 of the Education Code.”⁴²

In 1987, the Legislature enacted legislation similar to the 1981 legislation relating to community colleges and repealed many of the prescriptive provisions relating to the operation of the school districts.⁴³ Section 1 of the legislation states the intent of the Legislature in enacting the legislation:

“The Legislature finds and declares that, in 1972, the people of the state adopted an amendment to Section 14 of Article IX of the California Constitution, which permits the Legislature to authorize the governing boards of school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established.

⁴² Ibid.

⁴³ Stats.1987, ch. 1452.

“It is the intent of the Legislature, in enacting this act, to implement more fully, for the school districts, county boards of education, and the county offices of education in California, the intent of the people in adopting the amendment of Section 14 of Article IX of the California Constitution. The Legislature further finds and declares that, in order to do so, it is necessary to amend or repeal many provisions of the Education Code.

“Whenever in this Act a power, authorization, or a duty of a school district governing board, county board of education, or county office of education, is repealed or otherwise deleted by amendment, it is not the intent of the Legislature to prohibit the board or office from acting as prescribed by the deleted provisions. Rather, it is the intent of the Legislature, that the school district governing boards, county boards of education, and county superintendents of schools respectively, shall have the power, in the absence of other legislation, to so act under the general authority of Section 35160 of the Education Code.”

Clearly, the intent of the Legislature in enacting the legislation was to expand the authority of school districts, county boards of education and county superintendents of schools to act. The Legislature further reinforced its intent by enacting Education Code section 35160.1 which states:

“(a) The Legislature finds and declares that school districts, county boards of education, and county superintendents of schools have diverse needs unique to their individual communities and programs. Moreover, in addressing their needs, common as well as unique, school districts, county boards of education, and county superintendents of schools should have the flexibility to create their own unique solutions.

“(b) In enacting Section 35160, it is the intent of the Legislature to give school districts, county boards of education, and county superintendents of schools broad authority to carry on activities and programs, including the expenditure of funds for programs and activities which, in the determination of the governing board of the school district, the county board of education, or the county superintendent of schools are necessary or desirable in meeting their needs and are not inconsistent with the purposes for which the funds were appropriated. It is the intent of the Legislature that Section 35160 be liberally construed to affect this objective.

“(c) The Legislature further declares that the adoption of this section is a clarification of existing law under Section 35160.”⁴⁴

However, where other provisions of the Education Code prohibit a school district from entering into a contract which conflicts with the merit system provisions relating to the classified employees, Section 35160 does not validate the agreement. The classification of positions as part of the classified service of a district are governed by the more specific provisions of the Education Code, which control over the broad authority of Section 35160.⁴⁵ Nor does the passage of Section 35160 repeal existing regulations of the State Board of Education or deprive the State Board of Education of its authority to promulgate regulations.⁴⁶

Even though a school district has broad authority to conduct programs and activities under Section 35160, it may not assess a fee upon providers of deferred compensation plans or enter into public works contracts based upon unit prices in conflict with provisions of the Public Contract Code.⁴⁷

It has been held that Section 35160 grants school districts broad statutory powers which include the responsibility for making improvements to school property. Therefore, school districts could form recreation, improvement and maintenance districts under the general authority of permissive Education Code provisions of Section 35160.⁴⁸ School districts also have broad authority with respect to curriculum. Therefore, school districts have broad authority to enter into agreements with private companies for instructional programming even where the programming includes commercial advertising.⁴⁹

The enactment of Article IX, Section 14 and Sections 35160 and 35160.1 of the Education Code and the repeal of numerous provisions in the Education Code have profoundly affected the development of the Education Code. No longer do school districts and community college districts find it necessary to secure the passage of legislation each time a new situation arises which has not been specifically addressed in the Education Code. The enactment of the permissive Education Code reaffirms the principle of local control and provides school districts and community college districts with the general authority to act when new situations arise.

⁴⁴ Stats.1987, ch. 1452, section 199.

⁴⁵ California School Employees Association v. Del Norte County Unified School District, 2 Cal.App.4th 1396, 4 Cal.Rptr.2d 35 (1992).

⁴⁶ Choice-in-Education League v. Los Angeles Unified School District, 17 Cal.App.4th 415, 424, 21 Cal.Rptr.2d 303, 84 Ed.Law Rep. 382 (1993).

⁴⁷ See, 87 Ops.Cal.Atty.Gen. 14 (2004); 84 Ops.Cal.Atty.Gen. 5 (2001).

⁴⁸ Howard Jarvis Taxpayers Assn. v. Whittier Union High School District, 15 Cal.App.4th 730, 734-735, 19 Cal.Rptr.2d 109, 82 Ed.Law Rep. 570 (1993).

⁴⁹ Dawson v. East Side Union High School District, 28 Cal.App.4th 998 (1994).