

MICHAEL SMITH

PARTNER

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EDUCATION

J.D., University of California at Davis

B.A. (*magna cum laude*),
Claremont Men's College

PRACTICE AREAS

Labor & Employment
Students
Community Colleges

BAR ADMISSION

California

OVERVIEW

Michael E. Smith is a Founding Partner of Lozano Smith. He is a school law attorney, an educator and a speaker. Mr. Smith graduated from Claremont Men's College (*Magna Cum Laude*) and obtained his J.D. from the University of California at Davis. He was admitted to the California Bar in 1980, and has represented school districts for over 38 years. In addition to his General Counsel experience in all aspects of Educational law, Mr. Smith offers specific expertise in collective bargaining, labor and personnel, student discipline matters, and constitutional questions involving religion, speech and search and seizure. Mr. Smith also works extensively drafting superintendent and administrator contracts with a specialized focus on management compensation and STRS Retirement issues.

PROFESSIONAL AFFILIATIONS

Mr. Smith is a past president of the California Council of School Attorneys, current president of the California School Boards Association Education Legal Alliance Advisory Board, a member of the Advisory Board to the School of Education at California State University at Fresno, a former member of the Board of Directors of the National School Boards Association's National Council of School Attorneys and Chair of the NSBA Council of School Attorneys Amicus Committee.

PRESENTER EXPERIENCE

Mr. Smith's talents are highly sought as a presenter on education law issues. He is a frequent speaker at national and statewide conferences, which include the National School Boards Association, the National Council of School Attorneys, the California School Boards Association, the California Council of School Attorneys, and the Association of California School Administrators.

ARTICLES

Mr. Smith has written numerous articles. They include:

- > "*The Effective Use of Counsel*" published by LRP's The Special Educator, September 2002;
- > "*The Collective Bargaining Impacts of No Child Left Behind*" published in LRP Managing School Business, August 2003 and the NCLB Advisor, August 2003;

- > "*Educators: Set Aside 'Culture of Cynicism', Mind-set of Negativity; Focus on Positive*" published by LRP's California Special Education Alert, January 2004;
- > "*Find Silver Lining in Legal Gloom, Doom*" (re: NCLB, IDEA & other acronyms) and "NCLB Far From Perfect, But Signals a Push in the Right Direction", both published in LRP Publications, January 2004;
- > "*Lawfully Teaching About Religion in Schools*" published by the NSBA, April 2005;
- > "*Keep Staff Out Of The Dark On Parental Notification Mandates*" published by LRP Publications in Your NCLB Advisor, March 2006;
- > "*The Intersection of Sexual Orientation, Free Speech, and Religion in the Schools*" published by The Council of School Attorneys, November 2006;
- > "*The Girl Who Would Be Prom King*" published by NSBA, June 2007;
- > "*Certificated Step and Column Freezes*" published by School Services of California in the Fiscal Report, Volume 30, No. 1, January 15, 2010; and
- > "*Code of Conduct: Reviewing and Auditing Your Hiring and Supervision Practices for Athletic Coaches*" published by American School Board Journal, Volume 198, No. 8, August 2011.

SIGNIFICANT CASES

Morse v. Frederick (2007) 551 U.S. 393. Mr. Smith served as Amicus Counsel for the National School Boards Association and the American Association of School Administrators. The Supreme Court of the United States upheld the right of a high school principal in Juneau, Alaska, to discipline a student who held up a banner proclaiming "BONG HiTS 4 JESUS" during a school endorsed activity even without a showing of likely material disruption to the school environment. In doing so, the court overruled the previous decision of the Ninth Circuit Court of Appeals, which would have imposed personal liability on the principal for violation of the student's First Amendment rights.

Atwater Elementary School District v. Department of General Services (2007) 41 Cal.4th 227. The California Supreme Court issued a landmark decision when it held that the four-year period for a school district to bring dismissal charges against a teacher is not absolute. The District contended the four-year period should be extended based on principles of equity and fairness in order to permit the District to introduce evidence of sexual misconduct that occurred more than four years before the filing of the dismissal notice.

Eklund v. Byron Union School District (9th Cir. 2005) 154 Fed. Appx. 648. Mr. Smith served as Amicus Counsel on behalf of the California School Boards Association. The District won before the 9th Circuit Court of Appeals, having demonstrated that the school district lawfully taught about religion.

Duval v. Board of Trustees (2001) 93 Cal.App.4th 902. Established the principle that a legislative body may conduct comprehensive personnel evaluations in closed session, including a discussion of evaluation criteria and setting goals for future performance.

CTA v. Rialto Unified SD (1997) 14 Cal.4th 627. Mr. Smith Served as Amicus Counsel. In this case the California Supreme Court clarified the priority to be given to presently employed qualified, credentialed employees for coaching positions.

Belanger v. Madera Unified School Dist. (9th Cir. 1992) 963 F.2d 248. The Belanger case established that K-12 school districts have 11th Amendment immunity to Section 1983 civil rights claims.

Dilts v. Cantua Elementary School Dist. (1987) 189 Cal.App.3d 27. This case established that the doctrine of "substantial compliance" cannot be used to overcome a plaintiff's failure to comply with the Government Claims Act.