

CLIENT NEWS BRIEF

No. 2

January 2009

**SUBSTANTIAL SETTLEMENT REACHED IN
MANDATED COST CLAIM LITIGATION RELATING TO
BEHAVIORAL PLANS FOR SPECIAL EDUCATION STUDENTS**

A settlement of a 14-year long disputed state-mandated funding obligation regarding special education positive behavior intervention plans (“BIPs”) was recently reached between the State and school agency claimants. The agreement includes \$520 million in one-time funds and \$65 million in annual ongoing funds. The Hughes Bill, which is the source of the agencies’ claims, requires school agencies to develop behavioral intervention plans for special education students with serious behavior problems. The settlement requires approval by local educational agencies (LEAs), as discussed below, before it becomes effective.

Under the settlement, school districts would collectively receive an estimated \$85 million annually, from the 2011-12 school year through the 2016-17 school year. Effective in the 2009-10 school year, Special Education Local Plan Areas (“SELPA”) would receive an estimated \$65 million in annual ongoing funding for behavior intervention plans. SELPAs would also receive an estimated \$6 million in one-time funds and county offices of education would receive an estimated \$1.5 million in one-time funds. The actual distributions will be determined based on the California Department of Education’s certification of the average daily attendance (“ADA”) for each LEA.

Each LEA that chooses to participate in the agreement will waive its right to file annual mandate claims for payment of BIP services in exchange for the new funding provided by the agreement. Participating LEAs will be paid for BIP services without having to produce documentation supporting mandate claims and, because no claims will have to be filed, this will eliminate the need for subsequent audits of those claims. At least 85 percent of all LEAs, constituting 92 percent of statewide ADA, must approve the waiver in order to trigger the obligation by the Legislature to enact the funding.

On December 19, 2008, the California School Boards Association (“CSBA”) sent school districts, county offices and SELPAs a packet of information regarding the local board action that is needed to “opt in” to this agreement. The packet includes an explanation of the

agreement, the settlement agreement with waiver and draft legislation attached, sample board agenda item language, a sample board resolution, and an original and copy of a waiver document. These documents may also be accessed on the CSBA website at <http://www.csba.org>.

LEAs are strongly encouraged to place this matter on their board's agenda in January or February. The original signed waiver must be returned to CSBA *no later than February 27, 2009* to participate in this agreement.

If you have questions about this settlement agreement or special education in general, please contact one of our seven offices statewide.

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

N

*Written by Daniel A. Osher and Jacqueline Berryessa
Dan (dosher@lozanosmith.com) and Jacqueline (jberrryessa@lozanosmith.com) are associates,
both located in our Monterey office.*

©2009 Lozano Smith