

## ***SSDA Awarded David Evans as the 2014 Charles Binderup Award***

The SSDA Executive Committee broke from tradition in awarding David Evans the Charles Binderup Award at their 31st Annual Conference. Years ago they established criteria that included the recipient must be a seated superintendent and members of the Executive Committee could not receive the award.

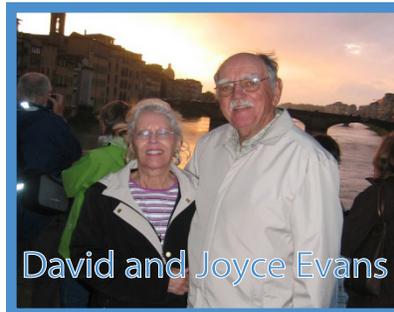
But David Evans' contribution to quality education in small school districts in California over the past three decades is beyond legendary. There has never been a more dedicated person to the family principles that grow and are nurtured in a small school district.

Dave's humble beginning would not have served as a predictor of his successes. He grew up in the Foster Care Program in San Diego County. On his own, against all odds, he graduated from San Diego State (where he fashioned himself a pretty good athlete) and earned a Doctorate from Stanford University. He entered the business world and became a Vice President in the McGraw Hill corporate structure.

He left the corporate office in Minnesota to become Assistant Superintendent in the California Department of Education during Wilson Riles' term. After several years in Sacramento, Dave left for the confines of Monterey County (Carmel) where he served not one but two small districts in neighboring San Benito County.

It wasn't only his successful resume that qualifies Dave, it is his willingness to serve, his vision of what the future holds and a tireless energy to help his colleagues.

A good friend and presenter of the award, Al Sandrini, told it best when he said, "I, like many of you, received countless calls from Dave during my years as a superintendent. He inquired as to my health, both physical and mental, my board and community relations or any concern I might have regarding my district. My advisor and sponsor was more than a mentor. I was one of the lucky ones; like so many of you, Dave adopted us as his personal charge and worked hard to see that we would succeed. Any successes we enjoyed, had his fingerprints all over it!"



David and Joyce Evans

In addition to serving as superintendent of two school districts at the same time, Dave was recognized as a Founder of SSDA, its president and penultimate leader for the first eight of our formative years. He has been a long time advocate for small districts in California.

David has been an innovative and tireless worker. His concern for student performance is always on the forefront. He now joins the ranks of past recipients of the Binderup Award which include such tireless leaders as Barry Reed, Shalee Cunningham, Jim Vidak, Cynthia Nellums, Tom Giampietro and Justin Cunningham.

In addition to the hardware presented past recipients, a scholarship in Dr. David Evans' name will be presented to San Benito High School where students from his elementary schools attended.

Few future recipients will be able to match the qualification of David Evans!

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# Landmark Software Privacy Laws: What Do They Mean For Schools?



Greg Rolan with Haight Brown and Bonesteel LLP

## I. Senate Bill 568

On February 21, 2014, California State Senate Pro Tem Darrell Steinberg announced legislation to protect students' online privacy. Senate Bill 568 will require education-related websites to use information only for educational purposes. California, the birthplace of the Internet Revolution, should be on the cutting-edge of crafting model legislation to scrutinize the education software industry. This is particularly true in light of the recent Fordham Law School report which demonstrated that over 90% of parents are worried about student data privacy. It is undeniably the right place and time, but is it the right law?

## II. Existing Statutes

There are already laws protecting students' privacy. The Federal Educational Right to Privacy Act ("FERPA") limits the release of student records by schools that receive federal funding. Schools cannot release "personally identifiable" information without parental consent. Furthermore, the Children's Online Privacy Protection Act ("COPPA") requires parental consent and notification of privacy rights for online data collection of personal information from persons under 13 years old. California law requires an online service that collects "personally identifiable" information to make its privacy policies available to consumers. Do these laws offer our children the protection they need?

## III. Differing Technological Models

To understand what is really necessary we must first differentiate technological models. There are third-party providers that "host" data. This "cloud" environment is attractive to districts because it can provide greater security and economy of scale. However, school employees have the keys to these electronic safety deposit boxes that contain sensitive information such as disciplinary or special education records. There is inconsistent enforcement and administration of this information. It is difficult for over-strapped and under-resourced schools to devote sufficient resources to data protection. But, it is the law. It is critical that school districts have board policies, regulations, and training to address this mandate. Does this new law address this need?

The other important technological model is where students interact with a data program as a learning tool. Teachers have been doing extraordinary work

by tracking student progress in real time and quickly identifying problems and solutions. iPads and iPods have become commonplace in our schools. The pedagogical potential is as unlimited as the potential pitfalls; there are dangers of data mining never seen before. We are in an evolutionary environment where the same software that can help teach can also collect marketing data. Information collected from electronic cafeteria cards can identify a child's food preference. Teaching applications can collect such information as the number of siblings a child may have or the number of rooms in their house. This creates the unnerving specter of not only "Big Brother," but also vendors marketing directly to our children. Everyone agrees that we should maximize the educational benefit and minimize commercial use; but does this law do that?

The new legislation is touted as prohibiting use beyond what school officials intend; but the legislative language does not reference officials' intent. Additionally, the bill defines and prohibits operator marketing. However, it only applies when the operator has "actual knowledge" that a minor is using the service. Finally, it only restricts specified products or services such as alcohol, firearms and tattoos. The intent is undoubtedly praiseworthy. However, it is hardly the circumspect protection against commercial use that has been presented.

## IV. What Does SB 568 Mean for Your District?

While the debate over legislation versus enforcement and commerce versus privacy rages, parents are worried about privacy. Existing laws and expectations will require us to be smarter so we can adapt to technology. Consequently, districts should discuss policies, procedures, and technological guarantees to protect student information. This includes server security as well as cloud security. More importantly, districts must revisit their vendor relationships. The contracts between school districts and operators will become the battleground over responsibility for student privacy. Districts should reevaluate their vendor contracts and license agreements as they pertain to any technology capable of collecting student information.

This document is intended to provide you with information about public entity/school district related developments. The contents of this document are not intended to provide specific legal advice. If you have questions about the contents of this alert, please contact Gregory J. Rolan at 415.281.7654 or your preferred Haight Brown & Bonesteel LLP attorney. This communication may be considered advertising in some jurisdictions. 

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Haight Brown & Bonesteel LLP  
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# Is Your Facilities Repair List Longer than Your Budget?



Bob Kjome with Robbelen Contracting, Inc.

School Districts need a positive way to maximize modernization and deferred maintenance funding early in the design process. As professional construction service providers, we often see projects out to bid where the scope and budget are not properly aligned. There is an easy way marry these incongruent forces of scope and budget. All it takes is teamwork and collaboration from the project team in a lease-leaseback delivery method.

Roebbelen has worked with many Districts to maximize use of funding on several kinds of projects. It is no secret that the work must be organized by the school site and quantified. The team consists of the District, Architect and Contractor and they take the time to place the scope into priority buckets for initial sorting.

How do you prioritize the work? This is where the tough decisions are made and Roebbelen likes to boil it down to four simple terms: "Must Haves" are DSA requirements such as Fire/Life Safety and Access Compliance; "Needs" are energy upgrades, day lighting, roofing and building skin repairs. "Wants" are items such as window replacements, data upgrades, classroom re-purposing; and "Cosmetic Items" such as painting, new interior finishes and doors. Of course each project has different goals and the scope priorities must be agreed upon by the District staff and Superintendent.

"With Roebbelen's pre-construction team facilitating the discussion, it was refreshing to participate in a rich flow of ideas and expertise as we tried to get the most scope for the dollar. I was impressed how the design team and the contractor would share thoughts and concerns and provide the district other viable options to meet the scope objective but at a lower price tag."  
- George Durnay, Director of M&O Vacaville Unified SD

Balancing cost, scope and added value is a rewarding experience. The budgeting process allocates estimated project costs by item and priority level and looks to see where additional grants and rebates may help augment the funding for the project. A well defined road map for implementation not only provides value engineering during design, but allows for overhead reducing synergies between scope, duration and project sorting. As each project is completed, the project team assesses results and makes continual changes to the process to harness the lessons learned.



Most Districts recognize the need to select a design firm based on qualifications and the ability to transform project vision to an effective design. It is just as important to select your contractor early in the process on complicated projects that require juggling of scope, systems selection and phasing plans. The investment made during the preconstruction phase will reap rewards if the contractor is made a trusted member of the team and plans for the actual construction needs are incorporated into the design. Clarity in scope, quality and schedule breeds confidence from bidders and will help Districts incorporate the most scope possible into each and every project. For more information, please contact Bob Kjome at Roebbelen Contracting, Inc. at [bobk@roebbelen.com](mailto:bobk@roebbelen.com) or (916) 939-1149.



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# What Happens If Employees Decline FMLA Leave?



Jennifer Rosner with Liebert Cassidy Whitmore

In a recent decision of the U.S. Court of Appeals, the Ninth Circuit Court in California held that an employee can affirmatively decline to use leave under the Family Medical Leave Act ("FMLA"). However, buyer beware! If an employee affirmatively declines to use FMLA that he/she would otherwise be entitled to, the employer may be shielded from a lawsuit if it takes an adverse employment action against the employee based on that leave.

The FMLA provides job protection to an eligible employee who takes leave (up to 12 workweeks per year) to care for the employee's spouse, child or parent with a serious health condition. However, in *Escriba v. Foster Poultry Farms*, an employee declined to use FMLA when she took an extended leave of absence to care for her ill father. When the employee was terminated for failing to comply with the company's absence policy, she filed a lawsuit claiming that her termination was an unlawful interference with her FMLA rights. The Court held that the termination was lawful because the employee had expressly declined to have her time off count as FMLA leave and therefore, was not entitled to job protection.

Maria Escriba worked at a Foster Farms processing plant for 18 years. On November 19, 2007, she met with her immediate supervisor to request two-weeks vacation leave to care for her ailing father in Guatemala. Her supervisor asked if she needed more time in Guatemala to care for her father, and Escriba responded that she did not. The supervisor told her that if she later decided to request more than two weeks leave, she would need to visit Human Resources. Escriba then went to the Foster Farms facility superintendent and told him she was going to Guatemala because her dad was very ill. She told him she was using two weeks of vacation time and asked her for an additional two weeks as a "favor." The superintendent told Escriba to send a note or documentation to Human Resources for the extra time. He did not instruct Escriba regarding her rights and obligations under FMLA and did not take any steps to designate her time off as FMLA. Escriba never requested any additional time from Human Resources.

Escriba then traveled to Guatemala to care for her father. While there, she decided that returning to work after two weeks would not be practical but she failed to make contact with her employer to extend her leave. Sixteen days after she was supposed to return to work, Escriba called her union representative who informed her that she

was going to be terminated under Foster Farm's "three day no-show, no-call rule." Under this policy, an employee is automatically terminated if absent for three work days without notifying the company or without seeking a leave of absence. Escriba then sued Foster Farms, claiming that the company interfered with her right to take FMLA leave.

To establish a case of FMLA interference, an employee must establish that:

1. He/she was eligible for FMLA protection;
2. The employer was covered by the FMLA;
3. The employee was entitled to leave under the FMLA;
4. The employee provided sufficient notice of intent to take leave; and
5. The employer denied the employee FMLA benefits to which he/she was entitled.

Here, the Court found that Escriba elected not to take FMLA leave after telling her supervisor that she only wanted vacation time and that she did not need additional time off. She also knew that her supervisor only handled requests for vacation whereas Human Resources had handled her past fifteen requests for FMLA leave. Moreover, Escriba had intended to take vacation time and not family leave. Accordingly, Escriba did not express intent to take leave under FMLA.

Thus, this case demonstrates that an employee cannot have it both ways – the employee cannot decline to use FMLA (even if the leave qualifies for FMLA) and then try to hide behind FMLA protections after the fact. Accordingly, once an employee declines to use FMLA, the employee assumes the risk of the decision. Thus, as in this case, if an employee declines FMLA leave, and goes on an unauthorized leave of absence, the employee can be lawfully terminated (consistent with agency policies). Because the FMLA does not require that an employee expressly ask for "FMLA leave" to fall under its protections, we recommend that the employer should inquire of the employee if it is necessary to determine whether FMLA is being sought by the employee and obtain the necessary details of the leave to be taken.

Jennifer Rosner, Associate in the Los Angeles office of Liebert Cassidy Whitmore, is a prolific litigator with an extensive background in suits involving discrimination, harassment and retaliation, as well as disciplinary and due process issues, and other employment law topics. In addition to her work as a litigator, Jennifer has successfully represented clients in arbitrations and in administrative appeal hearings.

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# Crucial Pending CalSTRS Action: Possible "Solutions"



Gerry Shelton with Capitol Advisors Group, LLC

Things are moving quickly in Sacramento in terms of discussion over the Governor's proposal to fully fund the California State Teacher Retirement System (CalSTRS) unfunded pension liabilities, estimated to be in excess of \$74 billion, over the next 32 years. Recall that the Governor's proposal makes the system whole by increasing contributions from three sources, 1) the State, 2) School employees covered by CalSTRS; and 3) School employers. The Governor's proposal is aggressive, places more than 60% of the funding burden on employers, and has certainly become the subject of ongoing discussion in the Legislature. Without a doubt, this is the most significant education-related budget issue pending in the Legislature at this time.

Your Capitol Advisors team has been in contact with both the Administration and the Legislature to discuss the proposal and possible ways that the impact on districts and county offices of education might be reduced or otherwise mediated. We have made it clear in those conversations that implementing this proposal without some change that reduces the impact would be a huge blow to the progress that we are making in terms of recovery from the Great Recession and in the implementation of new initiatives such as the LCFF and LCAP.

The Senate and Assembly committees that deal with pension issues held a joint hearing last week to discuss the Governor's STRS proposal. After SSDA testified before the committee, along with many of our K-12 colleagues, Assembly Member Bonta (who served as the committee's chair) announced he and Co-Chair Senator Norma Torres would send a joint letter to the full budget committees requesting a modified STRS proposal that would soften the fiscal impact of the proposal to school agencies which would begin only a matter of weeks from now. The letter outlined three key changes that were subsequently embraced by budget writers in both houses.

Smaller contributions for employers during the first 3 years. The modified proposal reduces the proposed increases in each of the first three years beginning in 2014-15, but maintains the 7-year implementation phase-in to 19.1 percent as well as the Governor's proposal for a 32 year plan for fully satisfy the unfunded liability in STRS.

The lower rates in the first three years will be as follows:

- 2014-15 .63% increase (down from the Gov's proposal of 1.25%)
- 2015-16 1.56% increase (down from the Gov's proposal of 2.85%)
- 2016-15 3.56% increase (down from the Gov's proposal of 4.45%)

Require CalSTRS to report back to the Legislature in the coming years. There will also be language that calls for periodic reports back to the Legislature on the progress being made to remedy the unfunded liability during the course of the 7-year phase-in of higher rates and beyond.

Slight revision to employee contributions: Pre-PEPRA (2013 STRS reform) and post-PEPRA employee contributions will both increase 0.15% in 2014-15, because CalSTRS is unable to separate the groups. The Governor's proposal had proposed only increasing the post-PEPRA rates 0.08% in 2014-15. The intent is to separate the groups later when CalSTRS is able.

While it is clear that Legislative leaders have developed this counter proposal to the Governor's STRS plan, there is also an effort underway to secure added LCFF funding to defray some of the increased costs. However, funding for such purposes would only result from overall Prop 98 spending that exceeds what the Governor has called for and undoubtedly competes with a number of other high legislative priorities.

Both the Senate and Assembly budget subcommittees have adopted plans that spend significantly more than the Governor has proposed for K-12 schools, and have based those plans upon the higher overall revenue forecast and corresponding projection of Prop 98 funding by the non-partisan Legislative Analyst. Among the competing priorities are added funding for common core implementation, pre-K and childcare funding, a fix to funding for CTE-ROP, equalization of transportation funding, and increasing funding to buy down prior year mandate claims.

As the proposal evolves and/or moves forward, we will keep you updated – through SSDA, through e-mail updates, and by updating the information that we are providing in our Budget Perspectives May Revision Workshops that are continuing to be offered around the state over the next two weeks.

## Northern California

**Placer County Office of Education, Seavey Center**  
Monday, July 7, 2014 - 8:30am-11:00am

**San Joaquin County Office of Education**  
Tuesday, July 8, 2014 - 8:30am-11:00am

**Alameda County Office of Education**  
Tuesday, July 8, 2014 - 8:30am-11:00am

**Santa Clara County Office of Education**  
Tuesday, July 8, 2014 - 2:30pm-5:00pm

**Contra Costa County Office of Education**  
Tuesday, July 8, 2014 - 2:30pm-5:00pm

**Sonoma County Office of Education**  
Thursday, July 10, 2014 - 2:00pm-4:30pm

**Butte County Office of Education**  
Tuesday, July 15, 2014 - 8:30am-11:00am

**Shasta Union High School District**  
Tuesday, July 15, 2014 - 2:30pm-5:00pm

## Central California

**Santa Barbara County Education Office**  
Thursday, July 10, 2014 - 8:30am-11:00am

**San Luis Obispo County Office of Education**  
Thursday, July 10, 2014 - 2:30pm-5:00pm

**Fresno County Office of Education**  
Friday, July 11, 2014 - 8:30am-11:00am

**Santa Cruz County Office of Education**  
Wednesday, July 16, 2014 - 9:00am-11:30am

**Monterey County Office of Education**  
Wednesday, July 16, 2014 - 2:30pm-5:00pm

## Southern California

**Orange County Department of Education**  
Wednesday, July 9, 2014 - 8:30am-11:00am

**San Bernardino County Superintendent of Schools**  
Wednesday, July 9, 2014 - 1:00pm-3:30pm

**San Diego County Office of Education**  
Friday, July 11, 2014 - 2:00pm-4:30pm

**Imperial County Office of Education**  
Wednesday, July 16, 2014 - 8:30am-11:00am

**Los Angeles County Office of Education**  
Thursday, July 17, 2014 - 9:00am-11:30am

**Palmdale School District**  
Thursday, July 17, 2014 - 2:00pm-4:30pm

# Budget Perspectives Workshop 2014-15 Budget Act

The Budget Act workshops center on the need-to-know implications of the state's enacted 2014-15 State Budget.

Our team will cover the fiscal, policy, and political realities that local schools will face as a result of the final budget. As LCFF and Common Core have changed the local budgeting process, our workshops meld the once much more separate worlds of fiscal/business and curriculum & instruction.

As usual, these workshops are presented to attendees at NO COST due to the close collaboration with the county office of education which helps make these workshops available.

Contributors and presenters include: Kevin Gordon, Jack O'Connell, Susan Stuart, Adonai Mack, Abe Hajela, Gerry Shelton, Barrett Snider, and Lee Angela Reid.

Questions? Please contact Rachel Scott at [rachel@capitoladvisors.org](mailto:rachel@capitoladvisors.org)



To register, please go to:  
[www.CapitolAdvisors.org](http://www.CapitolAdvisors.org)



# Are Communications on Your Private Electronic Devices Truly Private?



Heather Coffman with Liebert Cassidy Whitmore

The California Court of Appeals recently issued a decision that may give some relief to public agencies responding to requests under the California Public Records Act ("PRA"). The Court found that the PRA does not require public agencies to produce communications sent or received by public officials and employees on their exclusively private electronic devices using their private accounts. (*City of San Jose v. Superior Court* (March 27, 2014) --- Cal.Rptr.3d ----.)

In 2009, Ted Smith presented the City of San Jose with a PRA request for communications regarding a development project for the City. Specifically, Smith sought voicemails, emails or texts sent or received on personal electronic devices used by the mayor, city council members and staff. The City agreed to produce records stored on its servers and those transmitted to or from private devices using City accounts, but did not produce communications from the individuals' personal electronic accounts that were stored solely on personal devices or servers.

Smith filed a successful action for declaratory relief in Superior Court which found that the City was required to produce the requested communications notwithstanding the fact that the communications were not directly accessible by the City having been sent from and received on private devices using private accounts. The City appealed.

On appeal, the Court of Appeal addressed the issue whether private communications, which were not stored on City servers and not directly accessible by the City, are public records under the PRA (Government Code section 6250 et seq.).

The Court of Appeal held that the requested records were not public records, agreeing with the City and the League of Cities that

the PRA's reach is limited to records that are "prepared, owned, used, or retained" by the public agencies that are the subject of the Act. While the Court acknowledged concerns voiced by Smith and the news media that City employees and officials could conduct business out of public review by using personal accounts and personal devices, the Court said that was a concern to be addressed by the Legislature.

## How does this decision affect your District?

First, Smith may seek review of this decision by the state Supreme Court, so this may not be the last word on the matter. If the Supreme Court were to overturn or amend this Court of Appeal's decision, public agencies would be subject to that higher court's ruling.

Second, the Court of Appeal reaffirmed that the PRA only applies to writings that are "prepared, owned, used, or retained by any state or local agency." The Court held that communications sent to/ received by public employees and officials on exclusively private devices using private accounts are not public records. However, the public meeting requirements of the Brown Act can still apply and private records may still be discoverable in civil or criminal litigation or as the result of other court action.

Third, it cannot be overlooked that the City of San Jose did produce records sent from/ received on private devices that were stored on the City's servers. Thus, it remains possible that some seemingly "private" communications may still be subject to disclosure. For instance, if a councilmember uses a personal laptop to log into a city network to send/receive emails, then a private email sent from the council member's Gmail account and stored on city servers would potentially be subject to disclosure under the Act.

Finally, PRA requests continue to raise complicated legal questions regarding whether records are public records and/or exempt from disclosure. A failure to timely comply with the PRA can result in an order to disclose records as well as an order to pay attorney's fees. We therefore recommend that agencies designate one or more individuals to receive in-depth training and to regularly respond to PRA requests to minimize the risks associated with non-compliance.

Heather Coffman, Associate in the San Francisco office of Liebert Cassidy Whitmore, advises clients in all aspects of public employment and education law. Heather is also a talented litigator and trained mediator.



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- ⇒ *Negotiating in LCFF: Setting the Stage, Understanding Your Budget, and Critical Areas of Concern and Survival Tips*
- ⇒ *It's Common Core and a Whole Lot More*
- ⇒ *Understanding and Managing The Brown Act*
- ⇒ *The Ten Commandments and Assorted Do's and Don'ts*
- ⇒ *Effective Practices in Personnel Management*
- ⇒ *LCAP from the Expert*
- ⇒ *Pure Politics*



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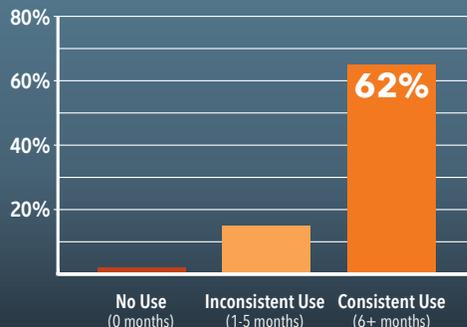
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# 2014-15 SSDA EVENTS

## Regional Meetings / New Superintendents Symposium

### **Pismo Regional**

Friday, July 11, 2014  
7:30 a.m. – 3:00 p.m.  
The Cliffs Resort  
2757 Shell Beach Road  
Shell Beach, CA 93449

### **Wine Country Regional**

Monday, July 28, 2014  
8:00 a.m. – 3:30 p.m.  
**TBD**

### **Siskiyou Regional**

Tuesday, October 7, 2014  
9:00 a.m. – 3:30 p.m.  
Siskiyou County Office of Education  
609 South Gold Street  
Yreka, CA 96097

### **Southern California Regional**

Friday, October 10, 2014  
8:30 a.m. – 3:15 p.m.  
Radisson Hotel  
11520 West Bernardo Court  
San Diego, CA 92127

### **Merced Regional**

Wednesday, October 15, 2014  
9:30 a.m. – 3:00 p.m.  
Merced County Office of Education  
632 West 13<sup>th</sup> Street  
Merced, CA 95341

### **Humboldt Regional**

Wednesday, October 29, 2014  
9:00 a.m. – 12:00 p.m.  
Humboldt County Office of Education  
901 Myrtle Avenue  
Eureka, CA 95501

### New Superintendents Symposium

July 14-15, 2014  
The Lions Gate Hotel  
3410 Westover Street  
Sacramento (McClellan), CA 95652

Be sure to visit [www.ssda.org](http://www.ssda.org) for on-line registration

Small School Districts' Association  
 29<sup>th</sup> Annual New Superintendents' Symposium  
 July 14 – 15, 2014

**Location:**

Lions Gate Hotel, 3410 Westover Street, McClellan, 95652  
 (916) 643-6222 or (866) 258-5651

Reduced Room Rate – \$92.00 per night

**Mention Small School Districts' Association to receive your reduced rate**

Cutoff date for receiving the reduced room rates is Monday, June 23, 2014

**For More Information**

For questions regarding registration and/or hotel accommodations, please contact Shelly Tillery at the SSDA office at (916) 662-7213 or e-mail to [shelly@ssda.org](mailto:shelly@ssda.org).

**REGISTRATION FORM**

**Registration Fee:**

	Current Superintendent	Aspiring Superintendent
SSDA Member	\$250.00	\$250.00
Non-Member	\$350.00	\$350.00

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*\* Credit card charges are subject to a 3% processing fee*

**Cancellation Policy:**

Cancellations must be received **IN WRITING** no later than July 1, 2014 in order to receive a refund. Cancellation notices may be faxed to the SSDA office at (916) 443-7468 or via email to [shelly@ssda.org](mailto:shelly@ssda.org).

**Please mail or fax this form (along with a check or purchase order, if applicable) to:**

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# Early Childhood Education and the Cloud

## How Cloud Curriculum Can Help Your District Realize the Full Potential of Pre-K and Transitional Kindergarten



Mikkel Storm with Waterford Institute

While talk of preschool is making headlines across the nation, California deserves credit for turning talk into action and forwarding several efforts this year that show significant commitment to early education.

We know research confirms that it's imperative to lay a solid foundation through early education, especially for our poorest children. Stanford psychology professor Anne Fernald recently found that the word gap between poor and affluent children is already evident at age 18 months. That grows to a six-month gap at age 2, and by the time they enter kindergarten as 5-year-olds, there's a two-year gap.

Research also tells us that high quality curriculum is essential if preschool is to fulfill its full potential. Well-trained teachers and small classes are a good start, but we also need excellent early literacy curriculum based on solid evidence to complement social and environmental needs.

That's where partners like Waterford Institute can help. In January, Waterford split from its long-time distributor Pearson to work directly with schools and districts. As a nonprofit with a research-based identity, we believe this lets us provide schools the best value possible, while reinvesting proceeds directly back into curriculum development and early childhood research.

### Meeting Children Wherever They Are

Waterford's preschool options are built around the idea of meeting our youngest learners wherever they are – a mission with a two-fold meaning: their knowledge level and their physical location.

First, Waterford's cloud-based adaptive learning programs are designed by expert educators, researchers and game designers specifically to address the varied needs of early learners. Utilizing proven learning sequences and pedagogy, it adapts comprehensive language arts, math and science education to each student's individual performance. Students move ahead at their own pace: accelerated for gifted students or taking time to reinforce concepts in a variety of ways for struggling students. The curriculum engages young learners with beautiful art, lively characters, catchy songs, engaging stories and thousands of developmentally-appropriate activities. Young students can use Waterford on their own no matter their computer ability.

Second, by saying we aim to meet students wherever they are, we also mean their literal locations – at school or at home. With cloud-based curriculum, it is now possible for children to learn wherever they are. To address the various needs we've heard from families and schools, we've crafted new PreK or transitional kindergarten curriculum options:

### Waterford Options for Transitional Kindergarten and PreK

Both of our pre-kindergarten options start with the foundation of Waterford's adaptive curriculum to provide students with the readiness skills necessary for kindergarten. Then, they draw on varying levels of technical support and access to meet school and district needs.

#### Waterford at School

Waterford at School provides Waterford's proven reading, math and science curriculum and assessment in a classroom setting for students. Teachers are equipped with professional development to get the most out of their Waterford core curriculum, including Waterford's adaptive learning software, workbooks and lessons. Additionally, teachers have access to the full library of thousands of activities, books and songs. Easy-to-use reports offer in-depth, individual student insights and group snapshots to help inform whole class and small group instruction.

#### Waterford at Home

Waterford at Home is based on the UPSTART model, which has been in place across the state of Utah for more than five years now, and has proven effective enough to win an i3 federal grant and be expanded by the Utah State Legislature threefold for the next five years. This at-home model has proven to provide two and three times student growth as measured by an external evaluator using the standardized Brigance and Bader early learning assessments. Schools and districts looking to create powerful partnerships between families and schools while preparing young learners to start kindergarten are adopting Waterford at Home. In addition to Waterford's assessment and adaptive learning software, Waterford at Home also includes teacher professional development, implementation and reporting.

It's not surprising that many early learners flounder when they get to school; they simply aren't prepared. But it doesn't have to be this way. Together, we can help close early learning gaps with evidence-based, comprehensive early learning programs.

### About Waterford

Waterford Institute is a nonprofit research center that creates personalized cloud-based instruction through award-winning curriculum, content and assessment for children aged PreK to 2nd grade. For more information, visit [www.waterford.org](http://www.waterford.org) or call toll free at 877.299.7997.





# School District Reorganization



David Walrath, SSDA's Legislative Advocate

Under prior school finance laws, an elementary school district had a financial incentive to unify in order to receive the increased high school revenue limit and a potential add-on for salary and benefit equalization. Frequently, the high school program costs would be less than the increased revenue limit allowing a discretionary revenue net increase. A second fiscal advantage also could occur if the elementary grade level enrollment growth rate was greater than the high school grade level growth rate because the elementary students growth would be funded at the higher unified revenue limit, which almost always was greater than the actual costs for elementary school programs.

Both elementary and high school districts could choose unification for education program delivery and integration. A small elementary district could consider unification to have more control over the high school curriculum and increase high school graduation rates. Education research has shown that dropout rates increase when students from small elementary schools have long school bus rides and attend high schools much larger than their elementary schools. On the other hand, graduation rates increase when students attend smaller high schools. High school districts could look at unification when there were many feeder elementary school districts with differing pupil achievement. In that case, unification was seen as a means to improve the students' academic level prior to entering high school.

The former revenue limit system provided supplemental revenues through the salary and benefit equalization as well as the blended revenue limit to fund the education program delivery goals. The former system also encouraged consolidation even if there were no education program delivery concerns.

## Reorganization and Local Control Funding Formula (LCFF)

The LCFF has no financial incentives to reorganize. There is no per pupil target increase for different salary or benefit schedules. There is no grade level benefit of a high school grade per pupil target blended into an elementary target for new enrollment growth. There is no increase in the rate of supplemental grant unduplicated count for the reorganized district compared to the unduplicated count in the districts prior to reorganization.

The only fiscal change is that the number of students generating concentration grant funding could decrease. If one of the districts has concentration grants and the other districts do not, then the combined number of concentration grants after reorganization will decrease. [District A has 100 students and 50 unduplicated count, while District B has 100 students and 60 unduplicated count. District B has 5 concentration grants. Combined, the districts have 200 students and 110 unduplicated count. Because 55% of 200 is 110, the combined districts have no concentration grants. The combined districts therefore lose funds compared to being separate districts.] If, however, both districts have concentration grants, the combination of the two districts will not result in a loss of concentration grant funds.

School districts considering reorganization should conduct a new fiscal and program delivery analysis because any prior analysis probably is no longer accurate.



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- Diversity Awareness: Staff to Student
- Human Trafficking Awareness
- CA Child Abuse: Identification and Intervention
- Online Safety: Predators
- Sexual Misconduct: Staff-to-Student
- Youth Suicide: Awareness and Prevention

[www.keenan.com/abusepreventioncenter](http://www.keenan.com/abusepreventioncenter)

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# Physical & Sexual Abuse in Schools: A Harsh Reality Facing Your District



John Stevens with Keenan & Associates

Physical and sexual abuse in schools, which used to be seen as an isolated local issue, has now become a national, federal and political issue. One report mandated by Congress estimated that as many as 4.5 million students between kindergarten and 12th grade are subject to sexual misconduct and physical or verbal abuse and national research concluded that less than 10% of abusers are ever caught or identified. Another recent report by the U.S. Government Accountability Office (GAO) said K-12 schools lack a systemic approach to preventing and reporting educator sexual abuse on students, despite a problem that the report said affects nearly one out of 10 students who are subjected to misconduct by teachers, coaches, principals, bus drivers and other personnel during their K-12 learning experience.

Sexual abuse exposure first became highly publicized as the Catholic Church paid billions of dollars to its victims. Recently we've seen Penn State University pay \$60 million to settle the Jerry Sandusky sex claims and LA Unified pay \$30M in settlements for a teacher sexually abusing students at Miramonte Elementary School. Millions of dollars have also been paid for a number of physical abuse incidents predominately against special education students.

Individuals with power and influence are preying on innocent children. Physical and sexual abusers come from a variety of areas, including teachers, coaches, volunteers, vendors, custodians, aides and other students. Abusive situations can happen at any school at any time and have nothing to do with the size of a district. This problem simply must be addressed.

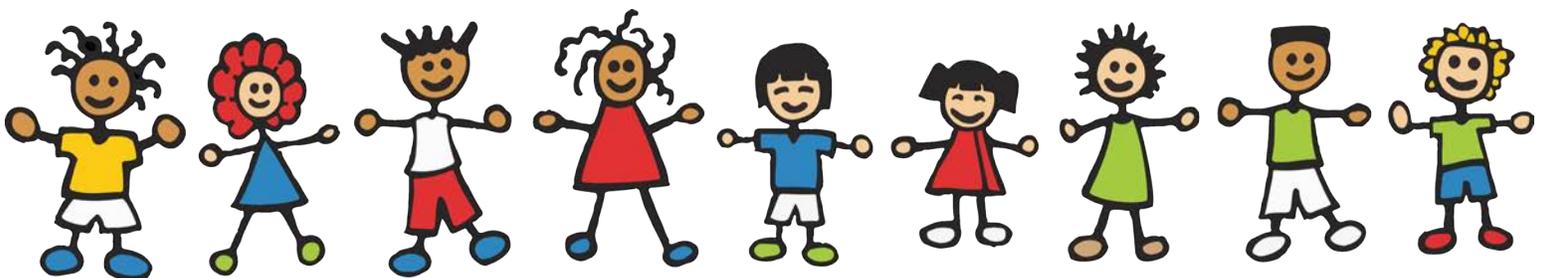
Beginning January 1, 2009, Government Code Section 905 and Civil Code Section 340.1 extended the statute to file a lawsuit for minors from age 18 to age 26 without the need to file a tort claim. The extended term for filing claims has significantly increased a school's liability exposures. In addition, Insurance Code Section 11583 allows for no tolling of prior statute if the district "pays for counseling" and fails to notify the victim of their right to file a claim. This means school districts' exposures may be indefinite in some cases with limited to no statutory defenses.

Mandatory Reporting laws require public school employees to immediately report suspected physical or sexual abuse whether the incident is believed to have occurred on or off campus. Reporting must be to the police (not the school police) or child protective services.

Local law enforcement and district attorneys are filing criminal action against school district employees who fail to report "reasonably suspicious" sexual abuse incidents under Mandatory Reporter laws. In fact, a Principal was recently convicted for failing to report suspected child abuse. Alarmingly, after the Principal stated "lack of facts" for the reason she didn't report the suspected abuse, the Judge told her "while she did what she thought was right, the Judge didn't think it was objectively reasonable at the time." This situation exemplifies the lack of tolerance judges and juries have for those that aren't fighting to protect children.

California juries have been punitive in their message

Continued on page 20



# Physical & Sexual Abuse in Schools : A Harsh Reality Facing Your District (continued)

Continued from page 19

and their verdict decisions make it clear there is no tolerance in instances where there has been the appearance of a failure to act or recognize abuse.

Following the 2011 Jerry Sandusky scandal, frequency of sexual abuse claims in California has increased well over 50%. Settlements and verdicts are escalating at an extremely rapid pace and regularly exceed \$1 Million dollars per claim. Many situations involve multiple victims, all of whom file claims, pushing defense and indemnity costs to potentially catastrophic levels. This is particularly true in cases where it appears that school districts didn't employ preventative measures that they reasonably could or should have. Human capital costs also have significant impact when you take into account employee time spent throughout the litigation process, responding to negative media attention and defending the district and individual reputations in the court of public opinion.

Social media is further compounding the problem. Through social media, communication easily escalates to personal comments then to sexual flirtation and illegal acts. In January, a woman who said her former middle school teacher sexually abused her for years decided to confront the teacher and post the video of the exchange on YouTube. While this helps create closure for the victim, this will create a new avenue for victims to confront their abusers and most likely lead to additional sexual abuse allegations.

As allegations hit the media, additional claims are often filed well after abuse allegedly took place. Following the Catholic Church sexual abuse scandal, for example, we saw an increase in claims as victims

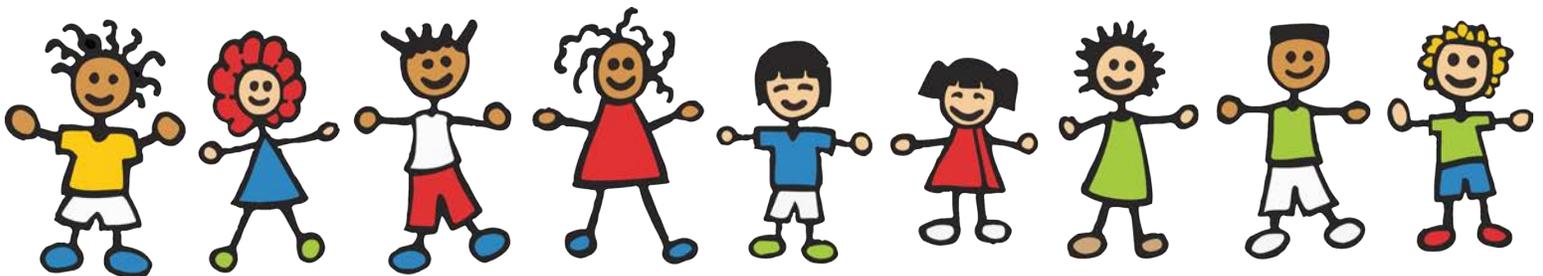
came forward to report their abuse. The same occurred following the Sandusky allegations. Some call these "me too" or "media hyped claims," but the fact of the matter in many cases is that a person of power and influence preyed on and sexually abused an innocent child.

No one ever wants abuse to become a reality in their schools, but the exposure is there and is unfortunately very real. Something needs to be done to raise awareness and help schools protect children. The 21st century is bringing new risks and ways for sexual predators to prey on children. Providing a safe environment for children to learn and prosper is paramount for our future.

Children deserve a right to learn without fear of physical or sexual abuse. Because of this, we've chosen to provide access to courses such as Mandatory Reporting, Sexual Misconduct: Staff to Student, Online Predators, Child Abuse: Identification & Intervention, Boundary Invasion, Diversity Awareness: Staff to Student, Dating Violence and Youth Suicide: Awareness & Prevention. All California public school districts can train all district employees at no cost. To access these courses, along with a comprehensive FAQ, Best Practices and other resources, visit the Abuse Prevention Resource Center at [www.keenan.com/abusepreventioncenter](http://www.keenan.com/abusepreventioncenter).

Keenan is proud to take a leadership position on this very sensitive and important issue. We are committed to helping California public schools provide a safe environment for children to learn and prosper.

John Stephens, Senior Vice President  
Property & Casualty Practice Leader  
[jstephens@keenan.com](mailto:jstephens@keenan.com)



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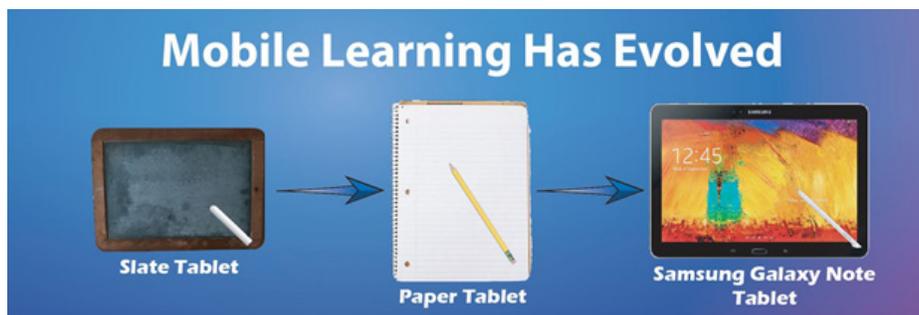
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# Mobile Learning Has Evolved: Are Your Students Using 21st Century Tablets?



Bob Lillie with Ray Morgan Company



It is no surprise that there is an explosion of devices entering the classroom. With the arrival of the Smarter Balanced Assessment test, the adoption of Common Core, the growing number of Mobile Learning devices, not to mention vendors trying to get their products into your classrooms, the greatest paradigm shift in education is taking place right before our eyes. Every school board, every superintendent, every school principal and teacher, as well as their IT departments are working aggressively to make the right decisions in meeting the challenges and opportunities that come with this shift. But you already knew that.

The missing piece in many discussions are the “how questions” – “How do teachers and administrators manage the devices coming into the classroom so they are helping the education and not hindering it?” At the Ray Morgan Company we understand the “how questions” – How does it work? How do we save money by improving our systems? How do you get more value out of the purchase? We get asked “how questions” every day - And we have the answer to the How question you’re facing - “How to implement Mobile Learning with today’s tablets.”

Classroom management is the critical component to success with any Mobile Learning Device implementation. Many districts rushed to purchase Chrome books to help with this spring’s Assessment testing, but what are those devices going to do the rest of the year? Will those devices be a tool to further education or just something that is put aside until next year? Yes, the IT department can manage a fleet of Chrome books, but what about the teacher, how can they manage them in their classroom while teaching? More devices equals more distractions some are thinking. And they could be right if there is no plan.

But consider this - that same assessment test could also run on a tablet as opposed to that Chrome book, so it could not only be used for that online assessment test but, it could

actually be an effective tool to enhance education before, during and after the test. After all, whether it was bubbles on yesterday’s paper page or today’s electronic screen - it’s the learning going on that the test is really supposed to measure. So wouldn’t a tool that could improve test scores be a better value in the long run rather than just a device for test taking? More usage equals more value which means budget dollars going further. That is a message school boards and parents like to hear.

While adding tablets to a classroom can make a difference, just bringing a piece of technology hardware is not enough, it needs to integrate into the classroom so teachers feel comfortable with it. When I was the Technology Director at my former school district, I observed teachers trying to guide a classroom full of students in the computer lab. They would want to bring the students to a particular website for researching a subject, but instead of students working independently, she’d get a room full of students misspelling the URL in 30 different ways! You have heard the expression “herding cats”? What if instead that teacher could guide that class to the right website by clicking a single button on her tablet and all the student tablets automatically went there too. Suddenly lab time is much more effective and she didn’t have to leave her classroom since the tablets were already there.

Whether you call it “flipped learning”, “bottom up teaching”, or “a guide by the side instead the sage on a stage” – the 21st century classroom is here. Are your classrooms using the tablets of today or still relying on yesterday’s solutions? You’ve heard it said “We have an app for that” – but how many apps do you need to run to present a lesson, quiz the students for understanding, and keep an eye on them when they are working independently? With the right solution it can do all of that with a single app.

It’s the 21st century after all, where teaching and technology go hand in hand.



# May Revision and Final Budget



David Walrath, SSDA's Legislative Advocate

The good news is that the May Revision probably is the minimum amount of funding schools can expect for 2014-15. If the Legislature and Governor agree to a higher revenue estimate, then the workings of Proposition 98 mean schools will be owed more money than what has been contained in the Revision.

Regardless of an agreement on new revenue estimates, SSDA will be sending a May Revision response to the Governor, Department of Finance, the Legislature and others as a means of addressing the CalSTRS funding proposal contained in the May Revision. Specifically, SSDA will recommend that \$400 million of the proposed inter-year deferrals not be bought out in 2014-15. Instead, those funds should be allocated as an equal amount per Average Daily Attendance (ADA) to address the school district employer cost increases for the CalSTRS unfunded obligation and the CalPERS contribution increases.

Last year, SSDA identified both of these costs as costs that were not included in the base funding for the Local Control Funding Formula (LCFF). SSDA advocates testified before the Legislative Budget subcommittees about this issue and problem because the need to increase contribution rates was already known and expected. SSDA proposed at that time that the Legislature include a provision to allocate additional funds to meet the contribution rate increases, and that those funds be allocated as an equal amount per ADA because all Local Education Agencies would be facing these unfunded costs. While the Legislature did not adopt that recommendation last year, SSDA continues to believe that it is the most equitable process to address these new employer costs.

If the Legislature and Governor agree to more revenue for schools, then SSDA will advocate that the first call on those new revenues should be an equal amount per student to cover the increase to the employer CalSTRS and CalPERS contribution rates.

If there is more than \$400 million in new 2014-15 revenue available for K-12 schools, then SSDA will continue to advocate for a cost-of-living increase (CLOA) and equalization for transportation, restoration of Career Technical Education (CTE) program funding, and restoring

Proposition 39 funding to the 2013-14 per ADA funding level. If there are additional one-time funds, SSDA will advocate for additional one-time funding for the costs of Common Core and the Smarter Balanced Assessment, as well as paying state mandate costs.

## What Is Next

The Assembly and Senate Budget Subcommittees will meet during the next weeks to finalize their budget proposals; they should finish no later than May 30th. Then the Budget Conference Committee will meet to reconcile the differences between the two budgets. While all of this public action is occurring, the Senate and Assembly leadership will be negotiating with the Governor and briefing their members on the status of negotiations. It will be through this private process that the use of higher revenue numbers will be determined and the allocations of those new revenues will be determined.

I expect that the Legislature and Governor will differ on the revenue numbers that will be used in the final budget. The Legislature will use a higher number and let the Governor veto the new appropriations if the Governor wants to use a lower revenue number. That way the legislators running for reelection can say they tried to help their constituents, even if the appropriations are vetoed, and the Governor, who is almost guaranteed reelection, can veto the programs to show his fiscal restraint. Given the relative positions of the Legislature and Governor, there is no realistic expectation that any veto will be overridden. That takes a two-thirds vote of each house, and while Governor Brown was the last Governor to be overridden by both houses that was a different time and different legislative dynamics.

At the same time as the budget process is playing out for an on-time June 15th budget, the Appropriations Committees of each house will be acting on their Suspense files of bills with appropriations. The actions of the Committees to release bills from Suspense will provide an indication of which programs the Legislature intends to fund from any new revenues used in the Legislature's budget proposals. 



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925 L Street, Suite 1200  
Sacramento, CA 95814  
Tel: (916) 662-7213  
Fax: (916) 443-7468  
Email: [shelly@ssda.org](mailto:shelly@ssda.org)

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