

Case No. S235903

SUPREME COURT
FILED

APR 28 2017

In The Supreme Court of the State of California

UNITED EDUCATORS OF SAN FRANCISCO, AFT/CFT, AFL-CIO,
NEA/CTA
Plaintiff and Appellant,

Jorge Navarrete Clerk

Deputy

vs.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD,
Defendant, Cross-Defendant and Appellant

SAN FRANCISCO UNIFIED SCHOOL DISTRICT,
Real Party of Interest and Respondent

SAN FRANCISCO UNIFIED SCHOOL DISTRICT,
Plaintiff and Respondent

vs.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD,
Defendant and Appellant

**APPLICATION OF OAKLAND UNIFIED SCHOOL DISTRICT FOR
PERMISSION TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF
REAL PARTY OF INTEREST/RESPONDENT AND RESPONDENT/
PLAINTIFF, SAN FRANCISCO UNIFIED SCHOOL DISTRICT;
BRIEF ATTACHED HEREWITH**

After a Decision by the Court of Appeal
First Appellate District, Division One
Case No. A142858/A143428

Superior Court of the State of California, County of San Francisco
Civil Case No. CPF 12-512437
Honorable Richard B. Ulmer, Jr., Judge

Marion L. McWilliams (SBN 187532)
Michael L. Smith (SBN 217751)
*Amy D. Brandt (SBN 306775)

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OAKLAND UNIFIED SCHOOL DISTRICT

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE
OF THE SUPREME COURT OF CALIFORNIA:

Pursuant to Rule 8.520(f) of the California Rules of Court, the Oakland Unified School District (“OUSD” or “District”) respectfully requests permission to file the attached brief as an amicus curiae in the above-captioned case. No party or counsel for a party in the pending appeal authored any part of the proposed amicus brief or made any monetary contribution intended to fund the preparation or submission of said brief. The proposed brief supports Real Party of Interest/Respondent and Plaintiff/Respondent, San Francisco Unified School District. OUSD is familiar with the present case and has reviewed the briefs of the parties.

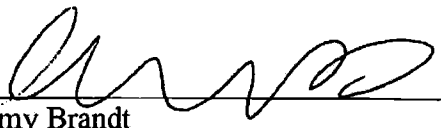
OUSD is a large, urban California unified public school district. During the 2016-17 academic year, approximately 49,600 students enrolled in OUSD District-run and District-authorized charter schools. (Declaration of Tara Gard [“Gard Decl.”], Exhibit [“Exh.”] 1, p. 1, “OUSD Fast Facts”). It employs approximately 1,200 ten (10)-month classified employees, approximately 900 active substitute teachers, and approximately 300 who accept jobs and work regularly. (Gard Decl, p. 1, ¶ 4, 6). Approximately 422 people were hired for classified positions serving summer school programs in 2016 for OUSD. (*Id.*, p. 1, ¶ 5). Approximately 117 one-day substitute teacher assignments were available serving the 2016 summer school program. (*Id.*, p. 1, ¶ 7).

OUSD considers the present matter critical, as the impact to the District and to school districts across the state will present a tremendous financial hardship. If the Court reverses the lower courts' holdings and requires unemployment benefits to be paid during summer months to 10-month classified and substitute employees who have reasonable assurance of employment during the subsequent academic year, it would necessarily require OUSD to identify and reallocate significant financial resources that it does not have; it would result in yet another unfunded mandate. Ultimately, the financial burden would have a negative impact on services for students.

Accordingly, OUSD respectfully submits its amicus curiae brief for the Court's consideration.

Dated: April 19, 2017

OAKLAND UNIFIED SCHOOL DISTRICT,
OFFICE OF THE GENERAL COUNSEL

By: 
Amy Brandt
Attorneys for Amicus Curiae
OAKLAND UNIFIED SCHOOL DISTRICT

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I. INTRODUCTION

The Oakland Unified School District (“OUSD”) submits this brief in support of Real Party of Interest/Respondent and Plaintiff/Respondent the San Francisco Unified School District (“SFUSD”). The issues raised in this case are a matter of concern for OUSD due to the significant financial impact a reversal of the lower courts’ decisions would cause. OUSD urges the Court to affirm the appellate court’s ruling that Section 1253.3 of the Unemployment Insurance Code (“U.I. § 1253.3”), subsections (b) and (c) preclude 10-month classified and substitute employees from receiving unemployment benefits during the summer months when provided with a reasonable assurance of employment in the next academic year or term.

There are a number of reasons why the Court should affirm the appellate court’s holding: (1) the plain meaning of U.I. Code § 1253.3 settles the matter; (2) the meaning of “academic year or term” does not include summer school; (3) to interpret “academic year or term” to include summer school would render the “reasonable assurances” language of the U.I. Code meaningless and inoperable; and, (4) there would be a significant financial burden to include summer school months for unemployment benefits. For these reasons, OUSD urges the court to uphold the appellate court decision.

II. STATEMENT OF THE CASE

The present dispute stems from the combined lawsuits filed between SFUSD, the United Educators of San Francisco (“UESF”) and the California Unemployment Insurance Appeals Board (“CUIAB”). The crux of the matter is the meaning of “academic year or term” as the phrase is used in U.I. Code § 1253.3, subsections (b) and (c), and its applicability to the 10-month classified employee and substitute teacher claimants represented by UESF. Both Petitioner/Appellants CUIAB and UESF seek to persuade the Court, in different ways, that U.I. Code § 1253.3 does not categorically prohibit unemployment benefits for all employees with reasonable assurance of employment between compulsory school year terms – for OUSD, this typically falls between June and August of each year.

SFUSD argues, and OUSD agrees, that the ordinary reading of U.I. Code § 1253.3, subsections (b) and (c) preclude all employees from receiving benefits during summer school programming when reasonable assurance letters are provided. The appellate court agreed, and further noted that to treat a summer school session as an “academic term” would render the reasonable assurance language of the UI Code § 1253.3 “meaningless and inoperable.”

III. STATEMENT OF THE FACTS

A. Background Information on OUSD

OUSD is a large, urban California unified public school district. During the 2016-17 academic year, approximately 49,600 students enrolled in OUSD District-run and District-authorized charter schools. (Declaration of Tara Gard [“Gard Decl.”], Exhibit [“Exh.”] 1, p. 1, “OUSD Fast Facts”). It employs approximately 1,200 ten (10)-month classified employees, approximately 900 active substitute teachers, and approximately 300 who accept jobs and work regularly. (Gard Decl, p. 1, ¶ 4, 6).

Approximately 422 people were hired for classified positions serving summer school programs in 2016 for OUSD. (*Id.*, p. 1, ¶ 5). Approximately 117 one-day substitute teacher assignments were available serving the 2016 summer school program. (*Id.*, p. 1, ¶ 7).

OUSD plans Summer Learning programs each year based on availability of funds and need in the community. OUSD Summer Learning programs seek to address the barrier to student achievement through dedicated full day summer programming aligned with college and career readiness and Common Core standards. OUSD offers several different program options, ranging from full day to part day. Summer Learning programs include Common Core programming, academic recovery, and

English Language Development intervention options.¹ Summer school programming is optional for students to attend and voluntary for employees to work.

IV. PLAIN MEANING AND LANGUAGE OF U.I. CODE SECTION 1253.3 SETTLES THE MATTER

The interpretation of “academic year or term” is at the center of dispute in this case, with varying suggestions as to the meaning by the parties. UESF contemplates that there is no clear definition excluding summer school as an “academic term,” and that “[n]othing suggests the academic year must be consecutive without recess or vacations or holidays or weekends or that it must be anything less than 365 days.” (UESF Reply², p.13.) UESF further contends that certain employees have a reasonable expectation of some work when they have made themselves available, as summer school staff will necessarily be absent or ill during the summer term. (*Id.* at 26.)

CUIAB separately argues that depending on employees’ indicated availability to work during the summer, “[t]here is nothing in the statutory

¹ OUSD Summer Learning Website: <http://www.ousd.org/Domain/147> [last visited on April 17, 2017.]

² Reply Brief of Petitioner/Appellant UESF to the SFUSD’s Answering Brief on the Merits to Opening Briefs on the Merits of the UESF and the CUIAB, Filed March 22, 2017.

text that supports, much less compels, treating such employees differently during summer school sessions.” (CUIAB Reply,³ p. 9.)

Although the parties in this case confuse the meaning of “academic year or term,” SFUSD argues, and OUSD agrees, that the language of U.I. Code § 1253.3 is clear on determining eligibility. U.I. Code § 1253.3, subsections (b) and (c) provide that benefits are **not** payable to an employee of an educational institution during the period between “two successive academic years or terms” when an employee performs services in the first of the academic years or terms and if there is a contract or reasonable assurances that the individual will perform services in the second of the academic years or term. Operationally and historically, the “period between two successive academic years” referred to the time between compulsory school terms. It has always applied during summer school, which is designed and determined on a year-by-year basis and is voluntary in nature for students to attend and staff to work. Further, as stated by the appellate court, “Section 1253.3 does not make any exception for employees who choose to make themselves available for summer work, and we decline to read such an exception into the statutory language.” (*United Educators of San Francisco AFT/CFT v. California Unemployment Ins. Appeals Bd.* (2016) 247 Cal.App.4th 1235, 1253.)

³ CUIAB Reply Brief on the Merits, Filed March 23, 2017.

A. “Academic Year or Term” Refers to the Compulsory School Year

The appellate court stated, and OUSD agrees, that in this context, the “ordinary meaning” of academic year or term is best derived from the Education Code, and that the definition is consistent with the traditional academic calendar, when school is in session for all students. (*Id.* at 1249.) The appellate court points to the use of the phrase “academic year” in Education Code Section 37620, compared to the definition in Education Code Section 37200. Section 37200 states that “[t]he school year begins on the first day of July and ends on the last day of June.” However, Section 37620 provides clarification between the academic year and the calendar year: “[t]he teaching session and vacation periods established pursuant to Section 37618 shall be established without reference to the school year as defined in Section 37200. The schools and classes shall be conducted for a total of no fewer than 175 days during the academic year.” OUSD agrees that this language provides an important distinction of the academic year from the calendar year. This distinction should also be applied as it relates to U.I. Code § 1253.3, as it further confirms that the “academic year or term” cannot be interpreted to include summer school or a full calendar year.

OUSD’s school calendar also supports what constitutes the “academic year or term”. The calendar published each year includes

instructional days during the fall, winter and spring months when attendance for students is mandatory. In contrast, OUSD's school calendar does not indicate any compulsory programming during the summer weeks between years (or, in other words, terms). (Gard Decl., Exh. 2, p. 1., "OUSD 2016-17 Academic Calendar")

B. To Interpret "Academic Year or Term" to Include Summer School Renders The Reasonable Assurance Language in U.I. Code § 1253.3 "Inoperable and Meaningless"

It is important to recognize that to include summer school as an academic term would effectively make the reasonable assurances language in U.I. Code § 1253.3 meaningless, as there would be no period between academic terms. As the appellate court noted, "treating an intervening summer session as an 'academic term' also renders the reasonable assurance language in section 1253.3 meaningless and inoperable. The term 'academic year' cannot reasonably mean 'calendar year' or otherwise include the summer period between mandatory academic terms." (*United Educators of San Francisco*, 247 Cal.App.4th at 1253.) Both the trial and appellate courts point out, and OUSD agrees, that, "[i]f the 'academic year' truly ran the entire calendar year ..., a 'period between two successive academic years' could never exist." (*Id.* at 1250.) As such, this interpretation should be avoided in the application of U.I. Code § 1253.3.

V. COST OF UNEMPLOYMENT BENEFITS FOR EMPLOYEES OVER THE SUMMER MONTHS WOULD CREATE TREMENDOUS FINANCIAL BURDEN TO SCHOOL DISTRICTS, INCLUDING OUSD

A. Expanding the Interpretation of U.I. Code § 1253.3 Would Significantly Increase Costs to OUSD and Other School Districts

Paying unemployment benefits for employees over the summer months would create a significant financial burden on the District without providing any additional resources. Currently, California school districts and community college districts contribute and participate in the School Employees Fund (“SEF”) in financing unemployment benefits. The Employment Development Department (“EDD”) administers the SEF to manage unemployment claims and benefits and collects contributions based on wages paid by each participating employer. The contribution rate for the current state fiscal year is 0.05% of total wages paid, plus a Local Experience Charge (“LEC”) to individual employers of up to 15% of total benefits paid.⁴ If the interpretation of U.I. Code § 1253.3 were expanded to include summer months, this would undoubtedly have a significant negative financial impact on all districts participating in the SEF, resulting in an increased contribution rate. Also, increased participation would impact the amount each school district is required to contribute according to its applicable LEC.

⁴ http://www.edd.ca.gov/payroll_taxes/school_employees_fund.htm [last visited April 17, 2017.]

While the amount of cost to OUSD or other school districts is unpredictable because it is based on participation, what is clear is that there will be no additional financing provided to support an alternative interpretation of the UI Code. Because substantial costs would be incurred by OUSD, it would necessarily require adjustments to budgeting, and ultimately impact programs and services to children. This would mean fewer teachers, resource aids and paraprofessionals, less teaching materials, fewer recreational and extra curricular options for students, an impact to the arts, libraries, music, sports and fewer programs that OUSD students rely on for supplemental support academically, socially and emotionally. Unfortunately, if the Court were to expand eligibility for unemployment benefits, the students would shoulder the cost of those benefits in the anticipated lessening in programs and resources offered to them.

B. Unsuccessful Attempts To Change U.I. Code § 1253.3 Supports The Need For Increased Financing If Expanding Eligibility of Benefits To Include Summer Months

Notably, the California legislature has made multiple unsuccessful attempts to alter this exact section of the U.I. Code, including Assembly Bill (“AB”) 399 in 2015, AB 1638 in 2014 and AB 615 in 2013. Most recently, AB 2197 was vetoed by Governor Edmund G. Brown in 2016 due to “several conformity issues with the federal Unemployment Insurance

laws, which could result in sanctions from the federal government...”⁵ AB 2197 was sponsored by Service Employees International Union, California (“SEIU”), and supported on record by California Federation of Teachers (“CFT”), named parent organization to plaintiff/appellant UESF.⁶ Importantly, this bill was contingent on budget appropriation for the purpose of implementation due to the fiscal impact to school districts, which are responsible for funding their own UI costs.

AB 2197 would have effectively changed U.I. Code § 1253.3 in the same way UESF is asking the Court to interpret the statutory language today, but without any additional funding to support increased eligibility for unemployment benefits. Further, consideration of the bill begs the larger question of why the law would need to be altered – something UESF supported – if the statute is written in a way that already allows for eligible employees to receive benefits during summer school, as petitioner/appellants claim. The answer is apparent – UESF actually recognizes that the statute does not allow for benefits during summer school, which is the reason it has supported legislative efforts to alter the statutory language.

⁵ Legislative History of AB-2197:
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB2197 [last visited April 17, 2017.]

⁶ *Id.*

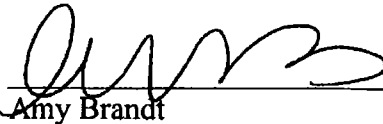
VI. CONCLUSION

OUSD urges the Court to affirm the lower courts' decisions, and in doing so to uphold the longstanding interpretation of U.I. Code § 1253.3, subsections (b) and (c). If the Court was to issue a reversal, OUSD would suffer significant hardship in appropriating funds to support the increased costs in paying unemployment benefits during summer months without being provided any support from the state – essentially, it would be yet another “unfunded mandate” that OUSD might face. This would ultimately have a negative impact on supporting academic programing and the students that OUSD serves.

Dated: April 19, 2017

OAKLAND UNIFIED SCHOOL DISTRICT,
OFFICE OF THE GENERAL COUNSEL

By: _____



Amy Brandt

Attorneys for Amicus Curiae

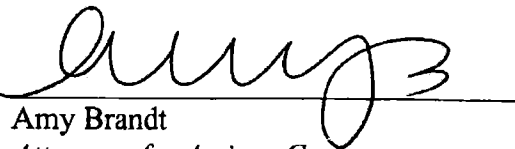
OAKLAND UNIFIED SCHOOL DISTRICT

CERTIFICATE OF WORD COUNT

This AMICUS CURIAE BRIEF IN SUPPORT OF REAL PARTY OF INTEREST/RESPONDANT AND PLAINTIFF/RESPONDANT, SAN FRANCISCO UNIFIED SCHOOL DISTRICT contains 2,222 words (including footnotes, but excluding cover, tables and this certificate). In preparing this certificate, I have relied on the word count of the computer program used to prepare this brief.

Dated: April 9, 2017

By:


Amy Brandt

Attorneys for Amicus Curiae

OAKLAND UNIFIED SCHOOL DISTRICT

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Attorneys for Amicus Curiae

OAKLAND UNIFIED SCHOOL DISTRICT

I, Tara Gard, declare:

1. I am the Deputy Chief of Talent (Human Resources) of the Oakland Unified School District ("OUSD"). I make this declaration from my own personal knowledge, except as stated on information and belief, and where so stated I believe it to be true. If called as a witness, I could and would competently testify to the matters as stated herein under oath.

2. Attached hereto as Exhibit 1 is a true and correct copy of the OUSD Fast Facts, which captures relevant statistical data on the 2016-17 school year.

3. Attached hereto as Exhibit 2 is a true and correct copy of the OUSD 2016-17 School Calendar.

4. During the 2016-17 school year, there are approximately 1,200 10-month classified positions in OUSD.

5. Approximately 422 people were hired for classified positions serving summer school programs in 2016 for OUSD.

6. During the 2016-17 school year, there are approximately 900 active substitute teachers, and 300 who accept jobs and work regularly in OUSD.

7. Approximately 117 one-day substitute teacher assignments were available serving the 2016 summer school program.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I executed this declaration in the City of Oakland, California on April 18, 2017.


TARA GARD

EXHIBIT 1



FAST FACTS 2016-17

OAKLAND UNIFIED SCHOOL DISTRICT

BOARD OF EDUCATION
 DISTRICT 1: Jody London
 DISTRICT 2: Airnee Eng
 DISTRICT 3: Jumoke Hinton-Hodge
 DISTRICT 4: Nina Senn

CONTACT
 1000 Broadway Suite 680
 Oakland, CA 94607
 (510) 434-7790
 www.ousd.org

DISTRICT 5: Roseann Torres
DISTRICT 6: Shanih Gonzales
DISTRICT 7: James Harris (President)

ALL SCHOOLS

DISTRICT-RUN SCHOOLS

Data listed below includes OUSD district-run & district-authorized charter schools. Data listed to the right is based on OUSD district-run schools only.

49,600 NUMBER OF STUDENTS IN OUSD DISTRICT-RUN & DISTRICT AUTHORIZED CHARTER SCHOOLS

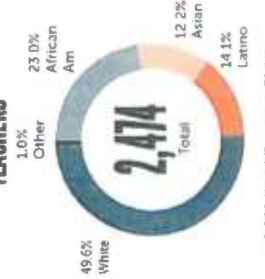
36,688 # of Students in OUSD District-Run Schools

12,932 # of Students in District-Authorized Charter Schools

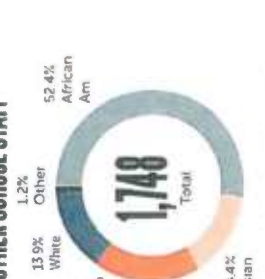
STUDENTS'



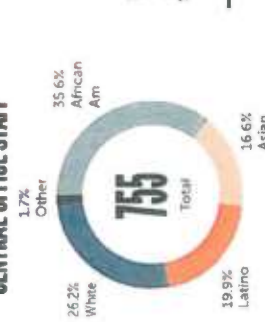
TEACHERS'



OTHER SCHOOL STAFF



CENTRAL OFFICE STAFF



EMPLOYEE SALARY?

\$46,250 BEGINNING K-12 TEACHER SALARY

\$50,958 Average Teacher Salary.
\$307,769 Average Principal, Assistant Principal & CDC Site Administrator Salary.
\$39,013 Average School Support Staff Salary.
\$64,801 Average Central Office Salary

CHILD NUTRITION

72.5% STUDENTS ELIGIBLE FOR FREE & REDUCED PRICE LUNCH

49 Schools with salad bars, **15** School-based fresh produce markets

7,745 Average number of breakfasts served daily, **19,949** Average number of lunches served daily in 2015-16

NEWCOMERS

2,028 TK-12 Teachers, **51** ECE Teachers, **387** Programs for Exceptional Children Teachers, **8** Adult Education Teachers

2,200 Newcomer students, **14** schools with Newcomer Programs, **366** Refugee students, **269** Asylee students, **400** Unaccompanied Minor students

ATTENDANCE

95.44% AVERAGE DAILY ATTENDANCE

11.1% Students chronically absent

BUDGET

\$790.9 Million TOTAL EXPENDITURE

GRADUATION & DROPOUT

64.2% 4 YEAR COHORT GRADUATION RATE

23.9% 4-Year Cohort Dropout Rate, **31.8%** Still Enrolled, **0.1%** GED Completer

HOME LANGUAGES

50.3% STUDENTS SPEAKING NON-ENGLISH HOME LANGUAGE

33.7% speak Spanish, **4.6%** speak Cantonese, **2.5%** speak Arabic, **2.4%** speak Vietnamese, **0.9%** speak Malay, **53** native languages spoken in OUSD

SUMMER SCHOOL

5,797 Students in **49** summer programs across **44** schools, **16** Partner organizations ran programs sponsored by OUSD

AFTER SCHOOL PROGRAMS

62 After school program sites, **7,822** Average number of students served daily, **18,291** Students served all year, **18** After school lead agency partners

COLLEGE & CAREER PATHWAYS

54.1% GRADE 10-12 STUDENTS ENROLLED IN A PATHWAY

42.1% Grade 9-12 Students enrolled in a Pathway, **28** Pathways in **12** high schools

SUSPENSION

4.0% STUDENTS WITH 1 OR MORE OUT OF SCHOOL SUSPENSION

10.8% African American male students suspended

ENGLISH LANGUAGE LEARNERS'

30.8% ENGLISH LANGUAGE LEARNERS STUDENTS

11,303 Students Total, **58.9%** Grade 6-12 ELLs are Long Term English Language Learners

GEOGRAPHIC

2.6 Miles AVERAGE DISTANCE TRAVELLED BY STUDENTS TO SCHOOL

44.3% Students attending a neighborhood school

SPECIAL EDUCATION'

11.7% STUDENTS WITH DISABILITIES RECEIVING SPECIAL ED SERVICES

4,301 Students total, **387** Special Education Teachers

EARLY CHILDHOOD EDUCATION

1,428 Pre-K/ECE Students, **29** ECE Sites, **51** ECE Teachers

This document is double-sided & was designed to be printed on **11 x 17** paper. Last updated on **December 6, 2016**.



DATA SOURCES: For additional notes on each data source, please refer to the back side of this sheet.