

TORTS

Sexual Abuse

SETTLEMENT: \$30,000,000.

CASE: Minors v. Los Angeles Unified School District, Mark H. Berndt, et al.

COURT/DATE: Los Angeles Superior Central / March 12, 2013.

MEDIATORS: Cruz Reynoso, retired Justice; Peter Lichtman, retired judge.

ATTORNEYS: Plaintiff - Raymond P. Boucher (Kiesel, Boucher & Larson LLP, Beverly Hills); Thomas A Cifarelli (The Cifarelli Law Firm, LLP, Santa Ana); Keith M Davidson (Davidson & Associates, Los Angeles); Jessica Dominguez (Law Offices of Jessica Dominguez, Studio City); Matthew S McNicholas (McNicholas & McNicholas, Los Angeles); John T. Medlen (Rosen & Loeb, Westlake Village); Philip Michels (Michels & Watkins, Los Angeles); Gregory J. Owen (Owen, Patterson & Owen, Valencia); Frank J Perez (Moreno & Perez, Los Angeles); David Ring (Taylor & Ring, Los Angeles); Alan I. Schimmel (Schimmel & Parks APLC,); Robert Tafoya (Tafoya & Garcia LLP, Los Angeles); John S West (Allred, Maroko & Goldberg, Los Angeles).

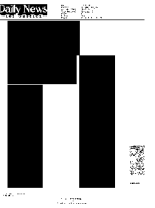
Defendant - David R. Holmquist (Law Offices of David R. Holmquist, Los Angeles); Thomas A. Delaney (Sedgwick LLP, Irvine).

FACTS: Several former Miramonte Elementary School students and parents of

students sued ex-teacher, Mark Berndt, who was charged with molesting 23 children, and the Los Angeles Unified School District for the sexual abuse the victims suffered at the hands of their teacher. Berndt allegedly blindfolded the children, placed cockroaches on some of their faces and posed in photos with them. The incidents took place inside the classroom. Berndt had also been charged with committing lewd acts with children between the ages of 6 to 10. The authorities began investigating Berndt when a film processor gave the authorities about 40 photographs that depicted the blindfolded children in the classroom. Some of the pictures showed students with cookies with a clear white liquid on top. A spoon and container found in trash inside Berndt's classroom tested positive for semen. The children told the investigating officers that Berndt had told them that the whole incident was a "game" and that the substance they ingested was "sugar." Berndt has worked for more than three decades at the elementary school.

RESULT: The School District agreed to a \$30 million settlement. Each of the alleged victims would receive about \$470,000 under the deal. This resolved about one-half of the pending cases against LAUSD.

MEDIATORS: Cruz Reynoso, retired justice; Peter Lichtman, retired judge.



Firing abusive teachers may be (a little) easier

A bill that would have made it easier to fire teachers accused of molesting students or committing other serious crimes died in committee last summer — a victim of the most powerful force in state politics today: teachers unions.

There's a new version of the bill in the Legislature this year. And because this legislation meets with the approval of the California Teachers Association, it passed unanimously through committee and will likely do the same in the full Assembly.

And it should pass. It should have passed last year. The story of why it didn't illuminates the sometimes disturbing way policy gets made in Sacramento.

The original legislation by Pa-coima Democrat state Sen. Alex Padilla followed the horror that unfolded that winter and spring in L.A. schools, beginning with the arrest of Miramonte Elementary School teacher Mark Berndt. He was charged with 23 counts of lewd acts with a child stemming from behavior that allegedly had been going on for decades. Later Telfair Elementary School third-grade teacher Paul Chapel II was arrested on suspicion of multiple sexual abuse and lewd acts with children over the course of his career. He later pleaded "no contest." This opened the door to accusations against many other teachers in the weeks to come.

These cases underscored a reality in California's public schools: its incredibly difficult, time-consuming and costly

for districts to fire teachers — even those accused of heinous crimes. For example, LAUSD terminated Berndt after the arrest. He appealed, and the district paid him \$40,000 just to go away. This cumbersome process has led to the controversial, and much criticized, "teacher jail" in which teachers accused of misconduct languish on paid leave for months, even years.

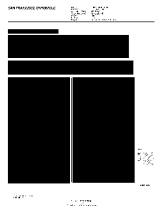
Speeding up this firing process for teachers accused of violent and sexual crimes is what Padilla's bill meant to do. Who could be against that? L.A. Mayor Antonio Villaraigosa praised it, as did LAUSD board President Monica Garcia.

But once dozens of teachers, bused in to stack the room during the Assembly Education Committee hearing, took the floor with complaints about the legislation, which ranged from its supposed redundancy to it being a witch hunt and even "un-American," it was already over. A majority of the committee was cowed, and the bill never proceeded.

Now, Assemblywoman Joan Buchanan, D-San Ramon, has AB 375, which Padilla is supporting as a co-author. It's a watered-down version that makes small changes around the edges, but is hardly revolutionary. The bill requires appeals be wrapped up in seven months, which hardly seems speedy. And it retains an appeals board rather than leaving it up to district officials. That the CTA has given its blessing indicates it won't be as effective as it might. Still, this bill should pass because it would improve the system we've

got now — a little. The original bill would have served the public better, but because of the inordinate power of one organization, it didn't have a chance.

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EDITORIAL *On Assembly Bill 375*

Streamline the process for firing bad teachers

It's unduly difficult to get rid of the worst teachers in California.

For proof, look no further than the Mark Berndt case.

Berndt, 61, was a Miramonte Elementary School teacher who was charged with 23 felony counts of lewd acts against children.

The Los Angeles Unified School District wound up paying him \$40,000 to retire — which it decided was less costly than dealing with the tortuous dismissal process. The district has since agreed to a \$30 million settlement for the children. Berndt has been in police custody since February 2012 — his court date is this month.

The Berndt case is shocking, but it's evidence of a system that's badly in need of an overhaul. Last year, state Sen. Alex Padilla, D-Pacoima (Los Angeles County), tried.

His SB1530 would have severely tightened the dismissal process for teachers accused of serious misconduct — by allowing them to be put on unpaid leave (instead of getting full suspension pay), getting rid of time restrictions on when dismissal proceedings can begin, and empowering local school boards to fire teachers accused of serious acts (currently, teachers go before a three-member panel of an administrative law judge and two other teachers). The California Teachers Association decided that the bill was too harsh, and its vigorous opposition helped kill the bill.

Now, Assemblywoman Joan Buchanan, D-Alamo, is trying again. Her bill, AB375, isn't as strong as SB1530 was, but it's at least a step in the right direction.

AB375 curbs some of the status quo's worst problems. Like SB1530, it also rolls back the time restrictions for filing dismissal cases.

In dismissal cases for physical or sexual abuse of children by teachers, it allows for the presentation of evidence that's more than four years old. (Currently, there's a statute of limitations on these worst-of-the-worst cases.)

It requires school districts to place an employee on leave in the case of homicide or attempted homicide

charges — another no-brainer.

And — in a move that should save school districts money — it requires the entire appeals process to be complete within seven months.

This provision is significant. It will seriously streamline the process and encourage school districts to institute dismissal procedures for teachers like Berndt, rather than offering them outrageous settlements to go away. Since the bill covers all forms of misconduct — not just the most serious kind — it's real reform with real teeth.

In order to make it work, Buchanan's bill has also removed the ability of litigants to take their disputes and appeals to the Superior Court, and limited the discovery process. What that means is a swifter, cheaper justice process for everyone.

For that provision alone, AB375 is worth supporting.

Did Buchanan make some concessions to get the teachers union's approval? (The union is supporting the bill). Yes, she did. In particular, she shelved Padilla's idea about changing the composition of the deciding panel. Teachers will still be judged by an administrative judge and two other teachers. Buchanan has even expanded the pool of eligible teachers, by lowering the number of years of teaching experience candidates must have from five to three.

But Buchanan's decision to let the panel composition stand may give this bill a fighting shot at being passed, and it's one of the most important education reforms we'll see out of Sacramento this year. Staff members in her office mentioned that there is some lingering opposition within the teaching community and that there's a chance the bill might change again.

For the sake of California's students, we urge lawmakers to remain strong, and to remember what's at stake.