Before the
Education Audit Appeals Panel
State of California

In the Matter of the Statement of Issues Against: Sierra Summit Academy	EAAP Case No. 01-50 OAH No. N-2002010131 Decision

On December 15, 2003, the Office of Administrative Hearings (OAH) issued a Proposed Decision with regard to liability for Appeal Findings 1 – 7.[1] On February 24, 2004, the Education Audit Appeals Panel (EAAP) issued a Notice of Nonadoption of Proposed Decision in order to decide the case itself under the provisions of Government Code Section 11517(c)(2)(E). EAAP invited additional briefing by April 2, 2004, particularly with regard to EAAP's subject matter jurisdiction.

The Controller of the State of California (SCO), denominated Appellant in these proceedings, did not submit an additional brief. Respondent Sierra Summit Academy (SSA) also submitted no brief. Sierra-Plumas Joint Unified School District (District), denominated Intervenor, submitted a letter that did not address subject matter jurisdiction.

Issue Presented

Whether the scope of EAAP's subject matter jurisdiction extends beyond findings in audit reports, to include determinations of liability among parties for repayment of State funding.

Facts

1. In 1997, the District chartered SSA as a charter school within the District. The District revoked the SSA charter on July 24, 2001.

2. On September 12, 2001, SCO issued the report of a financial and compliance audit conducted by SCO that contained audit findings regarding the average daily attendance (ADA) reported by SSA charter school for the period July 1, 2000, through December 22, 2001, to the District. On November 12, 2001, the District submitted an appeal in which it

[1] Findings 1 – 7 were summarized in the SCO audit report as conversion of private schools; evidence of sectarian curriculum; teachers lacked proper credentials; insufficient minimum daily instructional time; failure to comply with annual instructional time requirements; providing independent study instruction in a non-contiguous county; improperly reported attendance and attendance registers not signed by teachers. On December 9, 2003, OAH bifurcated the matter; Finding 8, supervisorial fees, was addressed in separate proceedings.

stated that its basis for appealing Findings 1 – 7 was that it was not liable for the debts and obligations of SSA.

3. On February 4, 2002, SCO filed the Statement of Issues in this matter—SCO's September 12, 2001, report of its audit of SSA.

4. On March 21, 2002, District counsel submitted a letter to OAH in which counsel provided the name and address for SSA's agent for service, Jeff Bauer. SSA made no appearance in this matter, and all notices sent to Bauer's address of record were returned as undeliverable.

5. Between April 16, 2002, and October 10, 2003, counsel for the District and for SCO filed briefs, with supporting declarations, addressing various theories under which the District could or could not be held liable for the repayment of state funding as a result of the audit findings contained in the Statement of Issues. On June 17, 2002, SCO and the District filed Stipulated Facts bearing on the liability theories being argued. None of the pleadings addressed the content of any of Findings 1 – 7, which deal exclusively with instances of non-compliance by SSA with statutes that are conditions of apportionment of State funding.

Legal Conclusions

When authority is granted by statute, the statute must be strictly construed. *McCarty v. Southern Pac. Co. (1905) 148 Cal. 211, 216.* Statutes are to be construed to effectuate the purpose of the law, and when the language is clear, there is no need for construction. *White v. County of Sacramento (1982) 31 Cal.3d 676, 681, Solberg v. Superior Court (1977) 19 Cal.3d 182, 198.*

EAAP's jurisdiction is set forth in Subdivision (d) of Education Code Section 41344 That subdivision provides that a local education agency may file an appeal with EAAP regarding "a *finding* contained in [a] final report" of an audit, and that at a hearing on the appeal, the local education agency may "present evidence or arguments if the local education agency believes that the final report contains any *finding* that was based on errors of fact or interpretation of law." (Emphasis added.)

EAAP has no authority under Section 41344, or any other provision of law, to make determinations of liability between parties for repayment of State funding.

Order

EAAP makes no determination whether the District is liable or is not liable for repayment of the apportioned funds associated with Findings 1 – 7; this matter is dismissed as to Findings 1 – 7.

Date: 26 April 2004

Thomas E. Dithridge, Chairperson
For Education Audit Appeals Panel