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**Exempt from payment of filing fees
(Government Code § 6103)**

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF CONTRA COSTA**

10 SAM CLEARE, SARAH KINCAID,
11 JEREMIAH ROMM, HILDA CRISTINA
12 HUERTA, AND JETAUN THOMPSON

13 *Petitioners,*

14 *v.*

15 WEST CONTRA COSTA UNIFIED SCHOOL
16 DISTRICT, KENNETH CHRIS HURST, WEST
17 CONTRA COSTA UNIFIED SCHOOL
18 DISTRICT BOARD OF EDUCATION,
19 JAMELA SMITH-FOLDS, DEMETRIO
20 GONZALEZ HOY, OTHEREE CHRISTIAN,
21 MISTER PHILLIPS, AND LESLIE RECKLER,

22 *Respondents.*

Case No. N24-1353

**RESPONDENTS' OPPOSITION TO
MOTION FOR WRIT OF MANDATE**

Judge: Hon. Terri Mockler

Dept.: 27

Date: October 23, 2024

Time: 9:00 am

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1 **I. INTRODUCTION**

2 By this Motion, Petitioners seek adjudication of their Petition for a Writ of Mandate to
3 compel Respondents West Contra Costa Unified School District, its Board of Education, and the
4 individual members of the Board (collectively, “the District”) to take certain actions allegedly
5 required by Education Code section 35186 (“Section 35186”), the Uniform Complaint Procedures
6 for the Williams Settlement. Specifically, Petitioners ask the Court to grant the Petition and issue
7 an order to enforce the purported “mandatory” duties under Section 35186 with respect to two
8 groups of Williams Complaints. With respect to the Stege Elementary School Facilities
9 Complaints, Petitioners in Count One seek an order compelling the District to:

- 10 1) Remedy (repair or otherwise fix) the issues raised in the Stege facilities complaints,
11 such as windows that do not work, broken floor tiles, mold, and plugged toilets; and
12 2) Send Petitioners and the other complainants a letter in 20 days telling them how they
intend to fix the Stege facility issues.

13 In regard to the Teacher Vacancy Complaints, the Petitioners in Count Two seek an order
14 compelling the District to:

- 15 1) Hire a full time single designated certificated teacher for each teacher vacancy at Stege
16 Elementary School (“Stege” or “Stege ES”), Helms Middle School (“Helms” or
“Helms MS”), and Kennedy High School (“Kennedy” or “Kennedy HS”);
17 2) Refrain from filling any teacher vacancy at these schools with substitute teachers for
18 longer than authorized or lined up sequentially so that no single teacher is assigned to a
19 class or classroom for the full year or by using other teachers at the school site to cover
20 a class or classroom on a day to day basis in addition to their own classes; and
21 3) Send Petitioners and the Court a written report about how it intends to hire a full time
single designated certificated teacher of each teacher vacancy at these three schools.

21 However, Petitioners are not entitled to any of this requested relief.

22 The Count One related to Stege Facilities Issues is moot, because the District has moved all
23 Stege students and staff to a different campus where they will remain until the Stege campus is
24 rebuilt and modernized leaving none of the complained of issues not remedied.

25 Moreover, with respect to Count Two regarding Teacher Vacancies, Section 35186 does not
26 create a mandatory duty to remedy these vacancies in any particular manner, let alone only by the
27 designation of a single permanent teacher to the position for the remainder of the school year.

28 Moreover, the act of hiring new employees is at its very essence discretionary on the part of the

1 District, but also, more importantly, on the part of the new hire. It is a basic standard of public
2 policy and common sense that the District cannot force someone to work for it. The District
3 cannot hire a permanent teacher to fill vacancies unless a qualified third party, who is not before
4 the Court, decides to apply for the District's open positions, and then if offered a position, decides
5 to accept that position. Moreover, because of the teacher shortage, there are not qualified
6 applicants to fill all forty-five open teacher positions at the District or the six open positions at the
7 three schools in question. The District is actively recruiting to fill these positions with permanent
8 teachers and will hire a qualified applicant who accepts a job offer. However, remedying the
9 teacher vacancies is not possible if qualified individuals do not apply for the positions or do not
10 accept offers of employment for a particular vacancy. Therefore, even if the Court finds the
11 Section 35186 created a mandatory duty, the Court should recognize an exception to the statutory
12 requirements based on impossibility and refrain from granting Petitioners' requested relief.
13 Petitioners' Motion for a Writ of Mandate should be denied in its entirety, and judgment entered in
14 favor of the Respondents.

15 II. SUBSEQUENT FACTUAL DEVELOPMENTS

16 A. **The District Has Moved Stege Elementary School to the DeJean Middle School 17 Campus Until the Stege Campus Buildings are Rebuilt and/or Modernized Pursuant 18 to a Design Build Project to be Completed in Time for the 2027-2028 School Year.**

19 As admitted in Petitioners' Motion, the District has temporarily abandoned the Stege
20 campus and moved the school, including all students and staff, to the DeJean Middle School
21 campus. Stege Elementary School will be housed on the DeJean Middle School campus until
22 completion of the Stege Modernization Project, which is currently schedule for June 2027. This
23 move was precipitated by a maintenance project this past summer. During the summer of 2024,
24 the District undertook a maintenance project to replace windows at Stege Elementary School.
25 (Declaration of Melissa Payne filed herewith in support of this Opposition ("Payne Dec.") at ¶5.)
26 During the project, the District discovered that construction materials dismantled from the window
27 bays contained lead paint chips and non-friable asbestos in the glazing putty. (Id.) Because of the
28 environmental hazard, the District decided to relocate Stege Elementary School to a temporary

1 campus co-located at the campus of DeJean Middle School until the completion of the Stege ES
2 Modernization Project. (Id.)

3 Following the decision to move Stege Elementary School to the DeJean Middle School
4 campus, the District notified the Stege community of the move to the DeJean Middle School
5 campus. (Payne Dec., ¶6.) For example, see the statement to parents issued by the District’s
6 Superintendent via the parent communication app, ParentSquare, attached as Exhibit A to the
7 Declaration of Karissa Provenza filed by Petitioners in support of their Motion (“Provenza Dec.”).
8 In addition to this communication and others, a community meeting was held on August 5, 2024
9 to provide information about the move and the new temporary campus and to answer questions.
10 (Payne Dec., ¶6; see also August 5, 2024 Stege Community Meeting Presentation available on the
11 Stege Elementary School website at <https://www.wccusd.net/domain/3290>.) Stege Elementary
12 School students started attending school on the De Jean Middle School campus on the first day of
13 the school year, August 19, 2024. (Payne Dec., ¶6.)

14 Despite Petitioners’ contentions to the contrary, the District has been giving public notice
15 of developments regarding the Stege Modernization Project as they have occurred over the years,
16 including most recently holding a community meeting on August 14, 2024 specifically to discuss
17 the scope of the Modernization Project and timeline to return to the Stege campus. (Id.) The
18 presentation from this meeting included information about community input into the development
19 of the conceptual design of the new Stege campus and depictions of potential campus layouts, site
20 plan, classroom interiors, and outdoor learning spaces. (See August 14, 2024 Presentation at
21 Stege Community Meeting attached as Exhibit D to the Declaration of Katherine A. Alberts filed
22 in support herewith (“Alberts Dec.”). Moreover, over the years, at publicly noticed and open
23 Board of Education meetings, District staff made presentations, and the Board took actions that
24 moved the Stege Project forward and provide public notice of the then current status.¹

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27 ¹ In addition to public notice in the Agenda and Board Packet for these meetings, the 2016 Long
28 Range Facilities Master Plan and all Facilities Master Plan Updates since 2020 are posted and
available on the webpage of the District’s Facilities Department at
<https://www.wccusd.net/Page/6945> .

1 For example, initially, as part of the District’s 2016 Facilities Master Plan, Stege
2 Elementary School was designated as a Critical Need project. The excerpts from District’s Long
3 Range Facilities Master Plan, attached as Exhibit 4 to the Petition for Writ of Mandate,
4 specifically stated that Stege Elementary was third in line of priority for total campus replacement,
5 but that there was currently not enough funds to do the replacement project. (See Petition, Ex. 4,
6 p. 127.) The Plan further stated that if the critical needs project had not been completed before
7 additional funding became available, the replacement project should go forward instead of the
8 critical needs project. (Id.)

9 In March 2020, voters approved a District bond measure, Measure R, to provide additional
10 funding for capital facilities projects. (Payne Dec., ¶2.) In June 2021, the District’s Board of
11 Education, upon the recommendation of a community-based Prioritization Committee, prioritized
12 the projects for use of the Measure R funds ranking the Stege campus replacement project third,
13 behind similar projects at Kennedy and Richmond High Schools. (Payne Dec., ¶2; see also
14 Provenza Dec., Ex. B², pp. 22-24 for description of 2020 Prioritization Committee and its role.) In
15 April 2023, the District hired an architectural firm to undertake project scoping, preliminary
16 design and budgeting for the Stege ES Project. (Payne Dec., ¶2.) The architectural firm completed
17 this work in the summer and fall of 2023. (Id.) On November 8, 2023, the District’s Board of
18 Education approved a \$43 million budget for the Stege ES Modernization Project. (Id., ¶2 & Ex.
19 A.)

20 Then on February 7, 2024, the Board authorized using the Design-Build (DB) project
21 delivery method pursuant to Education Code section 17250.10 *et seq.* for the Stege ES
22 Modernization Project. (Id., ¶3 & Ex. B). On March 6, 2024, the Board approved an amendment
23 to the architectural firm to prepare Schematic Design Level Bridging Documents as the Program
24 Architect for the Design Build Stege ES Modernization Project. (Id., ¶4.)

25
26
27 ² Ms. Provenza’s Declaration misstates the date of the Facilities Master Plan Update attached as
28 Exhibit B. Exhibit B is dated July 2020, not 2016 as declared by Ms. Provenza. The District
prioritized Stege Elementary as the third project in the Measure R implementation plan in 2021,
not in 2016.

1 On September 20, 2024, the District issued a Request for Qualifications and Proposals for
2 a design-build firm for the Stege ES Modernization Project. (Id., ¶7.) The construction timeline
3 calls for the Project to be under contract by the end of 2024 and for the Project to be completed in
4 June 2027. (Id.; see also the Design Build Stege Modernization Project RFQ/RFP at
5 [https://www.wccusdplanroom.com/projects/1723/specs/rfqrfp-design-and-construction-services-](https://www.wccusdplanroom.com/projects/1723/specs/rfqrfp-design-and-construction-services-design-build)
6 [design-build](https://www.wccusdplanroom.com/projects/1723/specs/rfqrfp-design-and-construction-services-design-build) under the Specs tab (“Stege RFQ/RFP”) and Alberts Dec., Ex. D.) The goal of the
7 Project is to demolish and rebuild as many of the buildings on the Stege campus as possible within
8 the Project budget (Payne Dec., ¶7), i.e. a total campus replacement (see the Stege RFQ/RFP, p.
9 14 and Alberts Dec., Ex. D.). Any buildings that are not demolished and rebuilt will be renovated
10 and modernized to be brought in line with the current District facilities standards (Payne Dec., ¶7;
11 Stege RFQ/RFP, pp. 14-15). In other words, none of the facilities issues underlying the Stege
12 Williams complaints will exist anymore following the Modernization Project.

13 **B. The District’s Extensive Efforts to Recruit and Hire Permanent Teachers for the**
14 **2024-2025 School Year Have Eliminated the Teacher Vacancies at Stege Elementary**
15 **School and Reduced the Teacher Vacancies at Helms and Kennedy.**

16 1. California’s Extreme Teacher Shortage Has Led to Teacher Vacancies at the
17 District and Across the Bay Area and the State.

18 California is currently facing a teacher shortage, and has been for a number of years, that
19 has and is impacting the District’s ability to hire permanent teachers for every teaching position in
20 the District. (Declaration of Camille Johnson filed in support herewith (“Johnson Dec.”), ¶2.) In
21 2023, in enacting Senate Bill 765, the California Legislature found:

22 (a) California's public education system was, prior to the COVID-19 pandemic,
23 experiencing a severe educational workforce shortage, especially in regards to the
24 recruitment and retention of teachers.

25 (b) The challenges California has been experiencing is not limited to California.
26 Across the country, states and school districts have been struggling to fill vacant teaching
27 positions.

28 (c) With the onset of the COVID-19 pandemic in early 2020, the state's teacher
shortage has been vastly exacerbated, in large part due to a greater percentage of teachers
choosing to leave the profession.

(d) According to the California State Teachers' Retirement System (CalSTRS), in the
last six months of 2020, after the pandemic began, there were 5,644 teacher retirements, a
26-percent increase over the same period from the previous year.

1 (e) By the end of the 2020-21 school year, 12,785 teachers had retired and another
2 11,754 teachers retired after the 2021-22 school year.

3 (f) According to a February 2022 national poll conducted by the National Education
4 Association, 90 percent of its members said that feeling burned out is a serious problem, 86
5 percent said they have seen more educators leaving the profession or retiring early since
6 the start of the pandemic, and 80 percent reported that unfilled job openings led to more
7 work obligations for those who remained teaching.

8 *2023 Bill Text CA S.B. 765*

9 Moreover, in a December 2023 article published in EdSource, State Superintendent of
10 Public Instruction Tony Thurmond stated that:

11 According to the California Department of Education, there were more than
12 10,000 teacher vacancies during the 2021-22 school year, particularly
13 concentrated in rural communities, communities of color and low-income
14 communities, as well as a 16% reduction in new teacher credentials, the first
15 decline in nearly a decade.

16 ... A recent nationwide survey [by the National Education Association] found that
17 1 in 3 teachers say they are likely to quit in the next two years.

18 “Want to solve the teacher shortage? Starting with increasing salaries,” Tony Thurmond,
19 *EdSource*, December 4, 2023, [https://edsource.org/2023/want-to-solve-the-teacher-shortage-start-
20 with-increasing-salaries/701802](https://edsource.org/2023/want-to-solve-the-teacher-shortage-start-with-increasing-salaries/701802)

21 The teacher shortage explains why despite all the recruitment efforts detailed below, the
22 District has been unable to hire permanent teachers for all teaching positions in past school years
23 and for this current school year; there are not enough available teachers, who want to work in the
24 District, to fill all the teacher vacancies across the District.

25 2. Current Status of Teacher Assignments For Stege ES, Helms MS, and Kennedy HS.

26 The following table provides the status of the teacher assignments for those positions at
27 issue in the Petition for Writ of Mandate at Stege, Helms, and Kennedy.

VACANCY	CURRENT STATUS
Stege Kindergarten	Permanent Teacher
Stege 2-3 combo	No combo class this year
Stege 3rd Grade	Permanent Teacher
Stege 4th Grade	Permanent Teacher
Helms 8th Grade Science	Permanent Teacher
Helms 8th Grade Math	Substitute Teacher
Helms 8th Grade Math	Permanent Teacher
Helms 8th Grade English	Substitute Teacher

1	Helms 7/8 Newcomers	No such position this year
	KHS English Development	Substitute Teacher
2	KHS 12th Grade Expository Reading	No such class this year
3	KHS P.E.	Permanent Teacher
	KHS Music	No such position this year
4	KHS Music	No such position this year

5 (Johnson Dec., ¶3.) Of the fourteen (14) vacancies at issue in the Petition, only three (3) vacancies
6 remain for the 2024-2025 school year.

7 Despite not submitting a Williams Complaint for any other vacancies, Petitioners' request
8 relief regarding all other current teacher vacancies at Stege, Helms, and Kennedy. Without
9 admitting Petitioners' right to such relief, and in the spirit of transparency, the table below shows
10 the current teacher vacancies at Helms Middle School and Kennedy High School. There are no
11 current teacher vacancies at Stege Elementary School.

12	VACANCY	CURRENT STATUS
13	Helms 8th Grade Science	Substitute Teacher
14	Helms 7th Grade Math	Substitute Teacher
15	KHS 9-12th Grade English Language Arts	Substitute Teacher

16 (Id., ¶4.)

17 The District is still actively recruiting to find permanent teachers for each of these
18 positions at Helms and Kennedy currently filled by a substitute teacher as well as the thirty-nine
19 (39) other open teacher positions across the District. (Id., ¶5.)

- 20 3. The District has used and is currently using many and varied means available to
21 recruit teachers and fill all open positions across the District with designated
22 permanent teachers.

23 During the 2023-2024 school year in preparation for the 2024-2025 school year and during
24 the summer leading up to this school year, the District engaged in many varied recruiting activities
25 and programs to fill all teaching positions across the District with permanent teachers. (Johnson
26 Dec., ¶6.) The District lists all its openings on multiple job sites, such as Edjoin, Indeed,
27 LinkedIn, EdCal, and EdWeek, and uses paid advertising on social media. (Id.) To recruit for the
28 2024-2025 school year, District staff attended thirty-seven (37) job fairs. (Id.) The District also has
a partnership contract with Teach for America to attract teachers leaving this program to the

1 District. (Id.) The District has partnership contracts with thirty-five (35) universities whereby it
2 attempts to recruit students to teach in the District. (Id.) The District also actively reaches out to
3 and advertises for credentialed retirees to return to the classroom. (Id.) The District also takes
4 advantage, as much as possible, of the exceptions and allowances in the Education Code for
5 teachers to teach outside of their credential permissions to fill vacancies, when the teachers want
6 to.³ (Id., ¶6 & Ex. C.)

7 The District also has developed its own programs to assist people in becoming credentialed
8 teachers. (Johnson Dec., ¶ 7.) For example, the District has a Teacher in Residency Program
9 through which an applicant with a bachelors' degree who applies for and enrolls in a credential
10 program at one of the District's partner universities is provided with tuition and living expenses
11 support, a yearlong placement with an experienced mentor teacher, and ongoing support during
12 the first years of teaching. (Id.) Through this program, a person can earn a general education
13 credential in a year or a special education credential and Masters' Degree in two years. (Id.) The
14 District had an employee to oversee this Program, the Coordinator of the Teacher in Residency
15 Program. (Id.) The Coordinator also recruits and assists any District classified employee who
16 wants to become a credentialed teacher. (Id.)

17 The District also takes advantage of the Commission on Teacher Credentialing's intern
18 programs. (Johnson Dec., ¶8.) The CTC allows students who have completed a certain amount of
19 their credentialing program to serve as full time classroom teachers on an intern credential through
20 an internship program at their credentialing school. (Id.) Moreover, the District uses Provisional
21 Internship Permits that allow credential students who do not meet the requirements to enter an
22 internship program to teach for one year on as a provisional intern. (Id.) Prior to requesting a PIP
23 from the CTC, the District must verify that a diligent search has been made, and a fully
24 credentialed teacher cannot be found. A PIP is issued for one year only. (Id.)

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27 ³ The special assignment authorization statutes in the Education Code and Code of Regulations
28 require the teacher to consent to the assignment or special credential authorization. See Education
Code §§44256(b), 44258.2, 44258.3(a), 44258.7(c),(d), 44263 and 5 CCR 80027(a)(6).

1 The District has also used the CTC's Short Term Staff Permit, which allows an individual
2 who has the required level of subject matter course work to fill an acute staff needed. (Id.) An
3 acute staffing need is defined as when the District needs to fill a classroom teaching position
4 immediately based on an unforeseen need, including, enrollment adjustments requiring an
5 additional teacher, inability or unavailability of the applicant to enroll in an internship program, or
6 leave or illness of the assigned teacher, who then cannot finish the school year. (Id.) A Short Term
7 Staff Permit expires at the end of the school year in which it is granted and cannot be renewed.
8 (Id.) Because of the temporary nature of this solution, the District reserves the use of these permits
9 to temporary extraordinary circumstances. (Id.)

10 In their correspondence with the District and in the Petition, Petitioners argue that the
11 District can reassign credentialed administrators and teachers on assignment to the classroom for
12 the year to fill vacancies. Doing so, however, is untenable. (Johnson Dec., ¶9.) First, the MOU
13 with the teachers' union requires that the credentialed teacher consent to the assignment or
14 reassignment, including the grade level, subject matter, and school. (Id.) The District cannot force
15 them to take a reassignment. (Id.) Secondly, if the credentialed administrator or teacher on
16 assignment does consent, then their former position is empty, and their work is not done. (Id.) For
17 example, the District has teachers on assignment who are developing and implementing the
18 District's early literacy program. (Id.) If these teachers agreed to return to a classroom, there
19 would be no one to do the essential and valuable early literacy work. (Id.) Moreover, there are not
20 enough credentialed administrators and teachers on assignment to fill the District's forty-five open
21 teacher positions. (Id.)

22 Similarly, under the District's MOU with the teachers' union, the District cannot force a
23 teacher who already works for the District to accept a position at a different school, in a different
24 grade, or for a different subject matter. (Johnson Dec., ¶11.) Even if it could, it would be unwise
25 for the District to do so, because given the teacher shortage, experienced teachers can easily find
26 employment in other districts. (Id.)

27 The District cannot force an individual to apply for its many vacant positions. (Johnson
28 Dec., ¶10.) The District has discretion not to make an offer of employment to every individual

1 who applies for an open position. (Id.) To receive an offer of employment, the applicant must meet
2 the District’s qualifications and pass the interview with the school site administrators and staff.
3 (Id.) Moreover, once it makes an offer of employment to a candidate, the District cannot force the
4 candidate to take the job. (Id.) People who want to teach have lots of options for employment in
5 the Bay Area. (Id.) Applicants have the discretion to apply where they want and to accept or not
6 accept any offered positions. (Id.)

7 **III. LEGAL ARGUMENT AND AUTHORITY**

8 **A. Standard of Review**

9 To receive a writ of mandate pursuant to Code of Civil Procedure section 1085, the
10 Petitioner must prove two essential, basic requirements for the issuance of the writ: “(1) A clear,
11 present and usually ministerial duty upon the part of the respondent [citations]; and (2) a clear,
12 present and beneficial right in the petitioner to the performance of that duty [citation]. [Citation.]”
13 *Monterey Coastkeeper v. Cal. Reg'l Water Quality Control Bd., etc.*, 76 Cal. App. 5th 1, 18-19,
14 (2022) “A ministerial act is one that a public functionary ““is required to perform in a prescribed
15 manner in obedience to the mandate of legal authority,”” without regard to his or her own
16 judgment or opinion concerning the propriety of such act. [Citation.] ‘Thus, “[w]here a statute or
17 ordinance clearly defines the specific duties or course of conduct that a governing body must take,
18 that course of conduct becomes mandatory and eliminates any element of discretion.”’ [Citation.]”
19 *Id.* ““Discretion, on the other hand, is the power conferred on public functionaries to act officially
20 according to the dictates of their own judgment. [Citation.]”” *Id.*

21 **B. Petitioners’ First Count in the Petition for Writ of Mandate Related to the Stege
22 Elementary School Facilities Complaint is Moot, Due to the District’s Temporary
23 Relocation of the Stege Elementary School to DeJean Middle School Until
Completion of the Stege Modernization Project.**

24 Petitioners seek a Writ of Mandate that would have the Court to compel the repair of the
25 broken windows, mold, plugged up toilets, and broken floor tiles in the existing Stege campus
26 buildings that the District has abandoned and will rebuild and/or modernize pursuant to a \$43
27 million design build project. This is the very definition of mootness, i.e. the inability of the Court
28 to issue effective relief due to changed circumstances following the filing of the Petition.

1 A case is considered moot when “the question addressed was at one time a live issue in the
2 case,” but has been deprived of life “because of events occurring after the judicial process was
3 initiated.” *Wilson & Wilson v. City Council of Redwood City*, 191 Cal. App. 4th 1559, 1574,
4 (2011) (quoting *Younger v. Superior Court*, 21 Cal.3d 102, 120 (1978)). “Because ‘the duty of
5 every judicial tribunal is to decide actual controversies by a judgment which can be carried into
6 effect, and not to give opinions upon moot questions or to declare principles or rules of law which
7 cannot affect the matter in issue in the case before it, it necessarily follows that when an event
8 occurs which renders it impossible for the court, if it should decide the case in favor of plaintiff, to
9 grant him any effectual relief whatever, the court will not proceed to a formal judgment. *Id.*
10 (citing *Consol. etc. Corp. v. United A. etc. Workers*, 27 Cal.2d 859, 863 (1946)).

11 As discussed above, the District has temporarily relocated Stege Elementary School to the
12 DeJean Middle School campus until completion of the Stege ES Modernization Project. Then, on
13 September 20, 2024, the District issued a Request for Qualifications/Request for Proposals for a
14 design build firm to design and construct the Stege ES Modernization Project, with the intent of
15 demolishing all existing buildings and replacing them. If the project budget does not allow for
16 demolition of all buildings, the remaining buildings will be remodeled and brought up to current
17 District facilities standards. In other words, none of the broken windows, mold, plugged toilets, or
18 broken floor tiles will exist once the Modernization Project is completed. And Stege students and
19 staff will not return to the Stege campus until the campus is rebuilt in approximately June of 2027.

20 Ordering the District to repair empty buildings that will not house any students or
21 employees until they are either demolished and rebuilt or remodeled to be brought up to the
22 District’s current facilities standards would be absolutely pointless and provide no practical or
23 effective relief to Petitioners or the other complainants. Additionally, the District would have to
24 waste public resources to repair issues in buildings that classes will not ever be held in again and
25 will either be demolished or substantially remodeled and brought up to current facilities standards.
26 Thus, any order compelling the District to fix the broken windows, mold, plugged up toilets,
27 broken floor tiles or other complained of issues is moot.

28

1 The same is true as to Petitioners' request for an order compelling the District to send a
2 response to the 45 parents and staff members who signed the Williams Act complaints at issue.⁴
3 To the extent that any of these complainants still have a beneficial interest in the condition of the
4 Stege facilities, i.e., have a child that still attends Stege or still works at Stege, the District has
5 already informed them of the move to DeJean Middle School and of the current status of the Stege
6 Modernization Project. In fact, Petitioner's counsel, Karissa Provenza testified that she knows
7 about the August 5, 2024 community meeting about the relocation to the DeJean campus.
8 (Provenza Dec., ¶9.) Thus, Petitioners know that Stege Elementary has been relocated. Moreover,
9 at the August 5, 2024 community meeting, the District invited those present to the August 14,
10 2024 meeting at which the District provided information about the Stege Modernization Project.
11 (See Alberts Dec., Ex. D.) This meeting was also advertised on the Stege website.
12 <https://www.wccusd.net/stege>. However, Plaintiff's Counsel does not state whether she or any of
13 the Petitioners attended the August 14, 2024 meeting, which would have answered the questions
14 about the Modernization Project poised in the Motion for a Writ of Mandate. Anyone who saw
15 the August 14 presentation given at the meeting knew that the issues complained about in the
16 Stege Complaints would be eliminated by the Modernization Project. (See Alberts Dec., Ex. D.)
17 Moreover, common sense indicates that the District would not spend \$43 million modernizing and
18 rebuilding the Stege campus, but not remedy the complained of issues. Therefore, Petitioners
19 cannot complain that the lack of a formal response now after all the public information provided
20 by the District about the relocation of Stege and the Modernization Project is necessary to inform

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22
23 ⁴ In their Motion, Petitioners mention the District's failure to include the 45 Williams Complaints
24 in its July 2023 Williams Report to the Board. However, relief on this point is not sought in their
25 Proposed Order. So, Petitioners are not seeking relief on this issue. Regardless, ordering the
26 District to amend its previous report would be pointless. Such reports are meant to provide the
27 Board with information about alleged facility issues. Given the Board's acknowledgment of the
28 state of the Stege campus, the District's relocation of all Stege students and staff, the Board's
authorization of a design build delivery method and \$43 million budget for the Stege
Modernization Project, and the issuance of the RFQ/RFP for the Stege Modernization Project, the
Board is already aware of state of the existing Stege buildings, which is why it took the actions it
did. No effective relief can be granted by amending the report.

1 Petitioners about the District’s plans to remedy the complained of issues in the now empty Stege
2 buildings. Any such order would not provide effective relief to the Petitioners.

3 Moreover, Petitioners’ argument that Count One is not moot because there is no guarantee
4 that the District will fix the complained of issues or carry out the Modernization Project is
5 baseless. For the capable of repetition, yet evading review exception to apply, Petitioners must
6 prove that (1) the case presents an issue of broad public interest that is likely to recur; (2) there
7 may be a recurrence of the controversy between the parties; and (3) a material question remains
8 for the court's determination. *Santa Monica Baykeeper v. City of Malibu*, 193 Cal. App. 4th 1538,
9 1548 (2011). Petitioners have not proven any of these required elements.

10 First, to present an issue of broad public interest, “there must be more at stake than simple
11 error-correction in an individual case.” *People v. McCray*, 98 Cal. App. 5th 260, 267-68 (2023).
12 Here, no issue is present regarding the Stege facilities that means anything to anyone other than
13 the Petitioners and their fellow complainants. Count One is not a matter of statutory construction
14 or public interest beyond the complainants. Secondly, Petitioners have not demonstrated that the
15 controversy is likely to recur by the District returning students and staff to the Stege campus
16 without fixing the complained of facilities issues. The District’s Board has committed to and
17 authorized the Stege Modernization Project as the next in order of priority in the District’s Master
18 Facilities Plan. (Payne Decl, ¶¶2-4, 7.) The students and staff have been relocated. (Id., ¶6.) The
19 District has issued the RFQ/RFP with the stated intent of being in contract with the selected firm
20 by the end of 2024. (Id., ¶7.) The Stege campus cannot be rebuilt or even modernized with
21 students and staff on campus. All of these facts demonstrate that the District is moving forward
22 with the Stege Modernization Project and has no intention of either not undertaking the Project as
23 planned or returning students and staff to the Stege campus prior to rebuilding/remodeling the
24 campus. Petitioners have provided no actual evidence to the contrary, but rather speculation based
25 on Board actions taken over the years, which were the necessary steps in the process of moving
26 forward with the Project. As such, Count One is not a situation that is capable of repetition that
27 would justify the Court issuing the sought relief despite it being moot. Therefore, this Motion as to
28 Count One should be denied and Count One dismissed with prejudice.

1 **C. The Alleged Duty to Remedy Teacher Vacancies By Hiring Permanent Teachers for**
2 **Each Teacher Vacancy is not a Mandatory Duty Subject to Enforcement by a Writ of**
3 **Mandate.**

4 Petitioners seek to enforce the alleged duty to remedy teacher vacancies set forth in
5 Education Code section 35186 subsections a and b through an order compelling the District to hire
6 permanent teachers for each teacher vacancy at Helms, and Kennedy, i.e the six teaching positions
7 currently filled by substitute teachers. However, a writ of mandate can only issue to compel
8 Respondents to perform a mandatory, non-discretionary duty. The act of hiring someone is at its
9 core an exercise of discretion, not only on the part of the District as the employer, but more
10 importantly, on the part of any potential new employee or potential reassigned employee, who the
11 Court cannot compel to apply for a position at the District or accept any offer of employment or
12 reassignment.

13 “Whether an enactment creates a mandatory duty is a question of law: ‘Whether a
14 particular statute is intended to impose a mandatory duty, rather than a mere obligation to perform
15 a discretionary function, is a question of statutory interpretation for the courts.’ [Citation]. The
16 enactment's language “is, of course, a most important guide in determining legislative intent, [but]
17 there are unquestionably instances in which other factors will indicate that apparent obligatory
18 language was not intended to foreclose a governmental entity's or officer's exercise of discretion.”
19 *Haggis v. City of L.A.*, 22 Cal. 4th 490, 499 (2000). To create a mandatory duty, the statute at
20 issue must be “*obligatory*, rather than merely discretionary or permissive, in its directions to the
21 public entity; it must *require*, rather than merely authorize or permit, that a particular action be
22 taken or not taken. [Citation.] It is not enough, moreover, that the public entity or officer have
23 been under an obligation to perform a function if the function itself involves the exercise of
24 discretion. [Citation.]” *Id.*, p. 498.

25 Here, the statutory language of Section 35186 does not expressly place an obligation on the
26 District to remedy teacher vacancies by hiring or reassigning a single designated certificated
27 employee for a teaching position for the entire school year. Rather what the statute says is that
28 upon receipt of a complaint about a teacher vacancy, which exists at the beginning of the semester,
the District “shall remedy a valid complaint within a reasonable time period but not to exceed 30

1 working days from the date the complaint was received.” Educ. Code §35186(b),(f). In a different
2 subsection, Section 35186 defines teacher vacancy as “a position to which a single designated
3 certificated employee has not been assigned at the beginning of the year for an entire year or, if the
4 position is for a one-semester course, a position to which a single designated certificated employee
5 has not been assigned at the beginning of a semester for an entire semester.” Educ. Code
6 §35186(i)(3).

7 However, nowhere in Section 35186 does it mandate that the District must “remedy”
8 teacher vacancies by hiring or reassigning a single designated credentialed teacher for the vacant
9 teaching position. In fact, Section 35186 does not place any restrictions on what constitutes a
10 proper remedy for any type of Williams complaint and leaves what the remedy is up to the
11 discretion of the District. Moreover, Section 35186 implies that there may be more than one way
12 to remedy a teacher vacancy or any other type of Williams complaint, because it gives
13 complainants the right to appeal to the District’s Board or the State Superintendent in the case of
14 dangerous facility conditions if the complainants are not satisfied with the District’s remedy. This
15 right of appeal would not be necessary if Section 35186 created a mandatory duty to remedy a
16 teacher vacancy by designating a single credentialed permanent teacher to fill teacher vacancy
17 within 30 working days without fail. The complainant would have no need to appeal a remedy
18 that grants them the only possible remedy which would be full elimination of the teacher vacancy.
19 Moreover, Section 35186 does not state that school district cannot remedy a teacher vacancy
20 through substitute teachers until the district is able to hire a credentialed permanent teacher to for
21 the position for the rest of the school year.

22 Additionally, as stated above, a mandatory duty is not created when statute creates an
23 obligation to perform a certain function if the required function itself involves the exercise of
24 discretion. The act of hiring a new employee to fill a certain position or reassigning a particular
25 employed teacher to fill a certain position is by its nature a function in which the District must
26 exercise its judgment, expertise and discretion to decide if an applicant is qualified and a good fit
27 for a particular position or if an employed teacher should be and is qualified to be reassigned to a
28 particular position. “The very essence of discretion is the power to make "comparisons, choices,

1 judgments, and evaluations." *Braman v. State of Cal.*, 28 Cal. App. 4th 344, 351 (1994) (quoting
2 *Thompson v. County of Alameda*, 27 Cal. 3d 741, 749 (1980). And the very essences of deciding
3 whether to hire or reassign someone is making comparisons, choices, judgments and evaluations
4 about their fitness for the position in question alone and as compared to other candidates.
5 Therefore, Section 35186 does not explicitly or implicitly create a mandatory duty to remedy
6 teacher vacancies by designating a single credentialed teacher to the vacant teacher position within
7 30 working days as the decision to hire or reassign an individual to such positions is one that is
8 discretionary at its essence and because the statutory language does not place any restrictions on
9 what constitutes a remedy of a teacher vacancy.

10 Petitioners argue that the duty in Section 35186 to remedy teacher vacancies by assigning
11 permanent teachers to those positions is mandatory, because the statute does not give the District
12 any discretionary leeway not to somehow find a permanent teacher to fill these positions. They
13 argue that the fact that the District has discretion as to how it goes about remedying the vacancy
14 does not make the duty to remedy the vacancy discretionary by designating a single credentialed
15 teacher for the school year. Petitioners equate Section 35186's duty to remedy vacancies with
16 other cases involving statutes that require the Department of Cannabis Control to create a database
17 designed to flag irregularities for the department to investigate or the statute that requires school
18 districts to provide 200 minutes of P.E. during each 10 school days, despite other parts of the
19 statutes that allowed the public entity in question to exercise discretion in how it carried out these
20 mandatory duty.

21 Petitioners' argument, however, overlooks the fundamental discretionary nature of what is
22 required for the District remedy the teacher vacancies at issue – hiring or reassigning a teacher.
23 They also do not address the fact that Section 35186 does not actually put any restrictions on what
24 constitutes a remedy of any Williams complaint. As such, the cases cited by Petitioners are easily
25 distinguishable as the statutes at issue explicitly required the specific action the petitioners in those
26 case sought to compel the respondents to do.

27 More importantly, Petitioners' argument ignores a very important and key difference
28 between the cited cases and most other mandatory duties and the duty to remedy teacher vacancies

1 here. Here, whether the District can fill the open positions with permanent teachers is entirely
2 dependent on the acts and consent of third parties, not before the Court, and beyond the power of
3 the Court or the District to control. Namely, there must be qualified individuals who want to work
4 for the District and accept an offer of employment for the open teaching positions or employed
5 teachers available for reassignment who agree to accept a reassignment. These potential job
6 applicants, new hires, and teachers who might be reassigned are not before the Court and are under
7 no obligation to apply for a job, to accept an offered job, or to consent to an offered reassignment.
8 The other cases cited by Petitioners involve mandatory duties, which the public entity has
9 complete control to perform. The Department of Cannabis Control can create a database without
10 needing to rely on third parties beyond its control. Similarly, it is completely up to a school
11 district as to whether it complies with the mandatory duty to provide 200 minutes of P.E.
12 instruction every 10 school days. Here, however, the District's ability to remedy the teacher
13 vacancies with permanent teachers is completely dependent on third parties beyond its or the
14 Court's control. The Court cannot fashion effective relief requiring the District to remedy the
15 teacher vacancies, because it cannot compel the discretionary acts of these third parties and it
16 cannot order the District to make third parties apply for jobs, accept jobs, or consent to
17 reassignment. (See Civil Code §3390.⁵)

18 Because the District's ability to comply with any Court order to hire or assign a single
19 designated employee to fill the six vacant positions at issue in the Writ is completely dependent on
20 the acts and consent of third party applicants and employees, mandamus should not issue to
21 compel any act for which it is impossible for the District to comply with on its own accord. It is
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23
24 ⁵ It is the public policy of this State as enacted in Civil Code section 3390 that a court cannot order
25 the Respondents to employ someone, to get someone to apply for or accept a job or consent to a
26 reassignment to a different teaching position. Section 3390 speaks to specific performance of
27 contractual obligations, which like writs of mandate is an equitable remedy governed by equitable
28 principals. If a court cannot order specific performance compelling the District to employ
someone or get a third party to act in a certain way or consent to something, then by those same
equitable principles, the court cannot order the District to do those same acts by way of a writ of
mandate.

1 an equitable maxim codified in Civil Code section 3531 that “The law never requires
2 impossibilities.” (Civ. Code, § 3531.) “Impossibility means not only strict impossibility but also
3 impracticability because of extreme and unreasonable difficulty, expense, injury or loss involved.
4 [Citation] Consistent with this maxim, the law recognizes exceptions to statutory requirements for
5 impossibility of performance. *People v. Lake County* (1867) 33 Cal. 487, 492 [impossibility of
6 performance makes mandatory statutory duty directory]; *County of San Diego v. Milotz* (1953)
7 119 Cal.App.2d Supp. 871, 883-884 [“[W]here strict compliance with the terms of a statute is
8 impossible, compliance as near as can be has been permitted on the principle that the law does not
9 require impossibilities.”].) *Bd. of Supervisors v. McMahon*, 219 Cal. App. 3d 286, 299-300 (1990).

10 As demonstrated above, the District has used many varied methods of recruiting and
11 programs to attract new teachers to the District. It has employed all means available to it under
12 the Education Code to fill each open position with a designated teacher for the school year,
13 including internship programs, Provisional Intern Permits, Short Term Staffing Permits, retired
14 teachers, and Local Assignment Options pursuant to Education Code section 44258.3 and other
15 statutes. It has also created its own program, the Teacher in Residency Program, to attract and
16 support newly enrolled credentialing students to fill vacancies. (See Johnson Dec., ¶¶ 6-10 & Ex.
17 C.)⁶ Despite all its efforts, three of the vacancies in the Williams complaints at issue are still open
18 and currently filled by substitute teachers; three additional vacancies exist at Helms Middle School
19 and Kennedy High School; and forty-five open teaching positions still exist across the District’s
20 forty-five K-12 schools. And the District has not given up on hiring teachers to fill these open
21 positions and continues to actively recruit to fill any and all vacancies across the District.

22 However, given the District’s dependence on third parties to fill these vacancies with a
23 single designated teacher, the teacher shortage, and the existence of remaining vacancies despite
24 active and diligent efforts to fill these positions, any order compelling the District to assign a
25

26
27 ⁶ Petitioners contend that the District did not and does not employ these methods to fill open
28 positions with permanent teachers. They are wrong as demonstrated herein. Consequently,
Petitioners’ argument regarding abuse of discretion is factually and legally baseless.


1 single designated teacher to the Helms and Kennedy vacancies would “require impossibilities” or
2 “impracticability because of extreme and unreasonable difficulty.” *McMahon, supra*, 219 Cal.
3 App. 3d at 299-300. Consequently, to the extent that the Court determines that Section 35186
4 does create a mandatory duty to designate a single credentialed teacher to the vacant teacher
5 positions at Helms Middle School and Kennedy High School, the Court should recognize an
6 exception to statutory requirements for impossibility of performance and refrain from granting the
7 requested relief under the present circumstances. *Id.*

8 **IV. CONCLUSION**

9 For the foregoing reasons, Petitioners’ Motion for a Writ of Mandate should be denied, and
10 judgment entered in favor of Respondents.

11
12 Dated: September 26, 2024

LEONE ALBERTS & DUUS

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16 KATHERINE A. ALBERTS
17 Attorneys for Respondents
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