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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

SAM CLEARE, SARAH KINCAID, JEREMIAH ROMM, HILDA CRISTINA HUERTA, AND JETAUN THOMPSON Petitioners, v. WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, KENNETH CHRIS HURST, WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION, JAMELA SMITH-FOLDS, DEMETRIO GONZALEZ HOY, OTHEREE CHRISTIAN, MISTER PHILLIPS, AND LESLIE RECKLER, Respondents.	Case No. N24-1353 **REPLY IN SUPPORT OF MOTION TO ISSUE WRIT OF MANDATE TO COMPLY WITH ED. CODE § 35186** Judge: Hon. Terri Mockler Dept.: 27 Date: October 11, 2024 Time: 9:00 am

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The District's opposition brief evinces the same cavalier attitude regarding its legal obligations that prompted Petitioners to bring this lawsuit. The District believes it does not have to follow the law set forth in section 35186. It does not dispute that it failed to respond to 45 facility complaints or report them publicly. Nor does it dispute that it continues to illegally assign substitutes beyond their authorization periods to cover current vacancies. And it does not dispute that it has ignored the legislatively prescribed steps for filling the vacancies at issue in the Petition, such as emergency-style permits and waivers. Instead of disputing its violations of California law, the District offers a raft of excuses and asks the Court to look the other way and allow it continue its lawless behavior.

With respect to its failure to respond to the numerous Stege facilities complaints, the District asks the Court to ignore the issue because the District announced a plan to eventually fix the school years from now. The District does not deny that it also hid the complaints by failing to include them in its statutory public reports to the Board and the County. Instead, the District says that the reporting was irrelevant because the board members presumably already knew about the issues at Stege Elementary, ignoring that a major purpose of the reporting requirement is to ensure that the public and the voters know about complaints.

The District's mootness arguments are also without merit. While the District has issued a request for proposals to renovate or rebuild Stege in the future, that contracting process is nowhere close to complete, so a live controversy remains. As of today, Petitioners' complaints remain unaddressed: classrooms still have mold, toilets still overflow with sewage, floor tiles are still broken. The District's "plans" are just that—plans that the District could abandon as soon as this case is over. Absent a writ of mandate, the District will be free to deprioritize Stege facility improvement plans, just as it did in 2021 when it substituted Stege's modernization with the modernization of two other schools.

With respect to the teacher vacancy complaints, the District claims it has complete discretion to utilize short-term substitute teachers working beyond their authorization—even

though such assignments are illegal under the Education Code. It is black letter law that a public official has a mandatory duty to take some action to execute a statutory obligation, even when that statute confers discretion in execution. (E.g., *Galzinski v. Somers* (2016) 2 Cal.App.5th 1164, 1174.) The principal problem with the District's approach to covering vacancies is that it continues to rely illegally on substitute teachers who are not authorized to teach in these classrooms for the entire year. That approach is not, by definition, a "remedy" under section 35186, and is independently unlawful. Moreover, while the District claims it has taken every available step to address the vacancies at issue, sworn testimony from the District's Superintendent of Human Resources demonstrates the opposite: the District has not invoked the legislatively prescribed procedures for lawfully filling vacancies, thereby "failing to act" in violation of its mandatory duties.

In the twenty years since Public Advocates settled *Williams* and helped draft section 35186, we have never seen a school district so dismissive of its obligations to remedy and respond to valid *Williams* complaints. Petitioners request that the Court issue a writ of mandate to compel the District to fulfill the requirements of section 35186.

II. ARGUMENT

A. THE COURT SHOULD ISSUE A WRIT OF MANDATE REGARDING THE FACILITIES COMPLAINTS RELATING TO STEGE ELEMENTARY

1. A Writ Should Issue Compelling the District to Respond to and Report *Williams* Complaints

The District does not dispute that it has failed to comply with section 35186's response and reporting requirements. The District advances no plausible explanation for its failure to comply with the law. Most troubling of all, the District expresses no regret for ignoring the law and offers no assurance that it will comply in the future.

There is no dispute that the District remains out of compliance with its statutory duty to respond to valid *Williams* complaints. (Ed. Code § 35186(b) [district "shall report to the complainant the resolution of the complaint within 45 working days"].) It has been over 15 months since the June 2023 facilities complaints, and the District still has not provided any

substantive response. The District's violation deprives complainants of their statutory right to appeal to the State if they are unsatisfied with the District's proposed remedy. (*Id.* § 35186(c).)

The District points out that it made public announcements to rebuild Stege Elementary during a community meeting in August 2024, *after* Petitioners filed this lawsuit. Those announcements at community meetings do not satisfy the requirement to "report" a proffered resolution *to the complainants* because (a) there is no assurance the complainants are present at such a meeting, and (b) it is not clear how complainants can administratively appeal an oral presentation, as contemplated by section 35186(c). Nothing in the statutory regime permits the District to ignore its reporting obligations by making a presentation at a community meeting 15 months after petitioners submitted their complaints and after a lawsuit was filed. A writ is necessary to ensure the District complies with its obligations to report the resolution of complaints within 45 days.

It is also not disputed that the District failed to include the 45 *Williams* complaints in its mandatory July 2023 Quarterly Report to the District Governing Board and the County. The District claims that its violations of the statutory reporting requirement were harmless because the Board supposedly knew about the complaints. (See Opp. at p. 16.) That argument is without merit. The quarterly report is a public document and listing *Williams* complaints is a critical tool to ensure oversight and accountability of ongoing violations in a school district. By omitting the complaints from the quarterly report, the District is hindering community members' ability to monitor the District's response—as well as the County Office of Education's and the State Department of Education's ability to monitor complaints about school conditions. The District cannot simply violate important procedural requirements—to hide uncomfortable details about its neglect of school facilities—and avoid legal accountability.[1]

[1] The District points out that Petitioners' recently filed proposed order omits relief on this precise issue. The Petition itself controls here, and the Petition requests this relief; in any event, Petitioners have filed an amended proposed order.

2. The Court Should Require the District to Remedy the Facility Complaints Regardless of the District's Announced Intentions

Despite the District's purported plan to renovate or rebuild Stege in the coming years, the District admits that it has not yet remedied the facilities complaints submitted over 15 months ago. Therefore, Petitioners "retain a concrete interest in the outcome" of their complaints. (*Golden State Water Co. v. Public Utilities Com.* (2024) 16 Cal.5th 380, 393.) A writ should issue because the District otherwise would remain free to abandon or deprioritize its rebuild plan at any point.

Indeed, a case is not mooted by the mere intention to fix the illegal condition. A case is not moot ""unless and until the [party] ***act[s]*** upon their intention." (*Cohen v. Super. Ct.* (2024) 102 Cal.App.5th 706, 714–715, as modified (June 18, 2024) [emphasis added] [granting writ of mandate because case was not mooted by defendant's intention to comply].) The District's announced intention to rebuild Stege Elementary through the issuance of a Request for Qualification is just that—an intention. At deposition, the District's Executive Director of Contract Administration admitted numerous grounds to conclude that an RFP is by definition tentative. She acknowledged that no contractor has even submitted any bids for the rebuild project, so "at this point there is no contract," nor even "a specific contract partner." (Supplemental Declaration of Karissa Provenza ("Supp. Provenza Decl."), Ex. 9 (Payne Dep.) at p. 65:13–15.) Indeed, it is not even certain that a contract will result from the RFP. (*Id.* at p. 49:13–16 [admitting there are "instances where a contract itself was not awarded after an RFQ/RFP was issued"].) That is particularly true here, where she admitted that accomplishing a "full campus replacement project" under the allotted budget would be "tight." (*Id.* at p. 58:10-11.) And because "things can happen that can have a big impact on price," even she had to admit that "we don't really know" what will happen with the project, that "it's really hard to predict the future," but "we'll all see what will happen next." (*Id.* at pp. 57:18–19, 59:6–7, 15–18.) Even were a contract assured, she admitted that timing of the project was not. (*Id.* at p. 48:13–16 ["I am aware of contracts where we have extended the completion date of a project following procedures outlined in the contract."].)

As these admissions demonstrate, at any time, the District could withdraw the RFP, modify it, or extend the timeframe for completion. Were it otherwise, any writ could be defeated by a government entity announcing, after being sued, that it intended to remedy its legal violations. The risk of the District abandoning or deprioritizing the repair of Stege in the coming years is not theoretical, because the District did exactly that in 2021. Stege was ranked as the third priority site in the 2016 Long Range Facilities Master Plan. But nothing was done, and Stege students were required to attend school every day for years in deplorable conditions.[2] In other words, in 2021, five years after Stege was ranked as third in priority, the District moved Stege down the priority list and allocated bond funding towards certain high schools, despite Stege being next in line for its modernization. After years of delay and shifting priorities from the District, Petitioners now require assurance from this Court that the District will address the facilities concerns at Stege.

Indeed, the very reason that the District wishes to avoid a writ is to maintain the freedom to reprioritize, delay, or cancel the supposed rebuild plan for Stege. Petitioners offered to withdraw the request for a writ relating to the facilities issues in exchange for a stipulated order that the District would follow through on its professed plan to rebuild Stege. The District refused to respond to that proposal, precisely to preserve its ability to change its mind and abandon Stege Elementary again. (*Id.*, Ex. 7.) A writ should issue to ensure the District's compliance with section 35186's statutory requirement that it remedy the conditions at Stege Elementary.[3]

3. Even If Petitioners' Claims Relating to Stege Facilities Were Moot, a Writ Should Nevertheless Issue

Mootness is not a bar to relief in California. The Court has the "inherent discretion" to consider the merits of an issue it deems moot. (*Konig v. Fair Emp. & Housing Com.* (2002) 28

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[2] Former WCCUSD spokesperson Liz Sanders acknowledged last year that despite Stege being a high priority since 2016, its repair was deprioritized in favor of other schools. (Nixon, *'I feel like you guys don't care about our school': Stege students, staff ask WCCUSD to fix 80-year-old building* (Jan. 18, 2023) Richmond Confidential <https://tinyurl.com/zwjrmj6v> [as of Oct. 4, 2024].)

[3] Because Petitioners' facilities claim is not moot, neither are Petitioners' related claims that the District failed to adhere to procedural reporting requirements.

Cal.4th 743, 745, fn. 3.) "As a rule, courts will generally exercise their discretion to review a moot case when 'the case presents an issue of broad public interest that is likely to recur.'" (*In re D.P.* (2023) 14 Cal.5th 266, 282.) This case presents an issue of broad public interest and is not a "simple error-correction in an individual case" as the opposition claims. (Opp. at 17 [citation].) Enforcing the facilities complaints will set a precedent of accountability for this District and other districts that fail to comply with the *Williams* complaint process. Otherwise, any district would be free to ignore valid complaints and delay their resolution for years, and then when a lawsuit is filed, to argue the case is mooted by the announcement of an "intention" to remedy the complaints.

B. A WRIT SHOULD ISSUE TO COMPEL THE DISTRICT TO REMEDY THE TEACHER VACANCIES AT ISSUE

1. Section 35186 Imposes a Mandatory Duty to Act, Even Though It Involves Some Discretion In Execution

The District claims that it has no enforceable duty to address complaints regarding teacher vacancies because section 35186 does not specify the particular manner in which the District must fill those vacancies. (Opp. at pp. 18, 19.) That is wrong. It is long settled that courts may issue a writ to compel officials to act "in some way" to discharge statutory duties that confer discretion as to implementation, even if the court cannot compel the exercise of discretion in a "*particular* manner." (E.g., *Ellena v. Dept. of Ins.* (2014) 230 Cal.App.4th 198, 205.) Put another way, where a statute imposes a duty that involves discretion in implementation, there is nonetheless a ministerial duty to take some action, and a failure to act is enforceable by writ. (E.g., *Galzinski*, *supra*, 2 Cal.App.5th at p. 1174 ["[W]hile the department and its personnel have a *ministerial duty* to conduct some sort of investigation into every citizen's complaint, the procedure leaves it to the *discretion* of the department and its personnel to determine what kind of investigation is reasonably necessary in each case." Italics revised].) It is equally well settled that courts may issue a writ when public officials have acted in a way that abuses the discretion conferred by the statute, such as by acting in a way that is manifestly unlawful or unreasonable. (E.g., *California Hosp. Assn. v. Maxwell-Jolly* (2010) 188 Cal.App.4th 559].)

The District's reliance on *Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, for a contrary rule is misplaced. (Opp. at p. 18.) *Haggis* was not a writ case, but instead an action for

money damages against a public entity. (22 Cal.4th at pp. 495, 498.) *Haggis* interpreted and applied Government Code section 815.6, which creates liability for a public entity under a certain kind of "mandatory duty." (*Id.*at p. 498.) But nothing in Government Code section 815.6, or anything else in Part 2 of the Government Claims Act, "affects . . . the right to obtain relief other than money or damages," which includes an injunction or writ against a public official. (Gov. Code § 814.) The District offers no other basis for its incorrect interpretation. Under the applicable case law involving writs (see Mot. at pp. 17–18, 20), even duties that involve some discretion are enforceable by writ.

2. The District's Use of Unauthorized Substitute Teachers Is a Straightforward Violation of Law

The District's use of substitute teachers, without seeking the appropriate year-long permits or waivers for those substitutes, violates section 35186, which requires permanent personnel be a "single designated" person and be properly certificated. (Ed Code § 35186(i)(3); see also Petn. ¶¶ 38, 59; Ed. Code § 44830.)

The District argues that it has the discretion to use substitute teachers to address teacher vacancies, and that the Court has no power to second-guess that approach. (Opp. at p. 19.) But the District ignores that the Education Code excludes rotating short-term substitutes, or a substitute working beyond their 30 or 60-day authorization, as a "remedy" for a "teacher vacancy." Section 35186 creates a regime for complaints about a "teacher vacancy," specifying that a "teacher vacancy" includes a classroom with a substitute teacher unless the substitute is *both* "certificated" and assigned for the "entire year." (Ed. Code § 35186(i)(3); Mot. at p. 16.) By virtue of this statutory definition, the use of a substitute is therefore not a "remedy" to a complaint regarding a "teacher vacancy." The District's argument that it can remedy a "teacher vacancy" with substitutes is contrary to the Education Code.

For years, the District has illegally relied upon substitutes to cover vacancies. The District continued this illegal practice for the entire 2023-2024 school year, even after Petitioners filed *Williams* complaints in January 2024 pointing out the violation. And the District is still illegally using substitutes to this day. At deposition, the District's Associate Superintendent for Human

Resources admitted that "the [D]istrict is utilizing substitutes beyond their 30-day periods," because "[w]e don't have a choice." (Supp. Provenza Decl., Ex. 8 (Johnson Dep.) at p. 40:18–21.) Yet she conceded that this practice violates the law. (*Id.* at p. 37:3–5 [acknowledging that 30-day substitute is teaching "beyond their lawful authorization"].) That is consistent with the District's position in response to the *Williams* complaints. (Petn. Ex. 8 at p. 3 ["The District acknowledges it is out of compliance[.]"].)

The District also ignores Petitioners' argument that it is a *de facto* abuse of discretion to implement a remedy in a way that conflicts with the law—such as using substitutes beyond their 30- or 60-day authorizations. (Mot. at pp. 16, 19.) That alone is dispositive here.

3. The District Has Failed to Take Other Action in the Manner Prescribed by the Legislature to Address the Teacher Vacancies At Issue

Although the District contends it is attempting to fill teacher vacancies in certain ways, it has failed to act in the manner prescribed by the Legislature to address the teacher vacancies at issue. Failure to take action to discharge a mandatory duty—even one that involves the exercise of discretion—is a violation of that duty and is enforceable by writ. (See Mot. at pp. 17–18, 20.)

The District explains that it is trying to fill vacancies in light of a teacher shortage. (Opp. at pp. 11–13.) It cites, for example, its job listings on websites, attendance at job fairs, partnerships with Teach for America and universities, and its Teacher in Residency Program. (Johnson Decl. ¶ 6.) But these are all baseline efforts to recruit and attract teachers. The Legislature has adopted a slate of mechanisms to fill teacher vacancies when and where those baseline recruiting efforts are insufficient. (See generally, e.g., Ed. Code § 44225.7(a) [directing school district to make certain recruitment efforts "[i]f a suitable fully prepared teacher is not available"].)

For example, the Legislature has empowered districts "to transfer a teacher" between schools when "in the best interest" of the district. (See Ed. Code § 35035(e).) This would include reassigning a credentialed teacher who is currently engaged in non-classroom and non-essential work (e.g., professional development efforts, supplemental or other administrative duties) to a classroom to teach students. The District cites its union MOU as an obstacle to involuntary

reassignment, but in fact the District frequently reassigns teachers without their consent. (See Supp. Provenza Decl., Exs. 2-5.) Moreover, the practice of other school districts shows that reassignment of staff members to vacant classrooms can be an effective remedy. (*Id.*, Ex. 6 [Los Angeles Unified School District reassigned hundreds of administrative professionals to vacant teaching positions, "replacing both long- and short-term substitute teachers"].)

In addition, the Legislature created procedures allowing districts to apply for an intern permit and, where interns are unavailable, for an emergency-style teaching permit—for individuals who satisfy certain minimal subject matter and pedagogical coursework requirements—that would allow someone other than a fully credentialed teacher to cover a classroom vacancy for an entire year. (Petn. ¶ 45.) The Legislature also created separate procedures for a district to apply for and obtain a waiver, allowing the assignment of that individual to a classroom for an entire year, provided that the district can demonstrate the individual is the "best available candidate," will receive "ongoing support and assistance" and has "commit[ted] to completing requirements for the appropriate credential." (Supp. Provenza Decl., Ex. 1 at p. 4; see also Petn. ¶ 46.) Thus, the waiver process drives the District toward supporting the underqualified teachers and solving its shortage problem objectives, something the District here subverts with its practice of illegal substitutes.

There is no evidence that the District has attempted to undertake these efforts for the *specific vacancies at issue in the Petition*. Although the District vaguely suggests that it has used certain procedures at unspecified times in the past—e.g., it says it has, at some point, used the Short Term Staff Permit—nowhere does the District claim to have sought such permits in connection with the vacancies that Petitioners identified. To the contrary, Ms. Johnson implicitly concedes it has failed to do so on the basis that the permit expires "at the end of the school year," and that "the District reserves the use of these permits to temporary extraordinary circumstances." (Johnson Decl. ¶ 9.)

The District's opposition likewise does not state that it is using the waiver process for minimally certified personnel so that the "best available candidate" is in place to teach year-long and cure the vacancies. In fact, the opposition brief does not mention the word "waiver" once, let

alone claim that the District has diligently sought to apply for or obtain waivers for teachers assigned to vacancies.

4. The District's Proposed "Impossibility" Exception Is Meritless

The District also contends that if it does have a duty to designate a single certificated teacher to the vacant positions, the Court should recognize an "exception" to that duty where compliance is "impossible." (Opp. at p. 23.) This argument is meritless. The issue is not whether teachers will apply for jobs or consent to reassignment, but whether the District will invoke legislatively prescribed procedures when the ordinary process of teacher recruitment does not work. As discussed above, the District has not demonstrated that it has exhausted, or even attempted, the available options for filling the at-issue teacher vacancies, and therefore it cannot claim that doing so is "impossible." The District's plea to be relieved of its mandatory duties and allowed, instead, to employ unlawful or non-permanent teachers outside state procedures and oversight should be soundly rejected.

III. CONCLUSION

Petitioners respectfully request that this Court grant Petitioners' Motion.

DATED: October 4, 2024

Respectfully submitted,

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