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22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
23 **COUNTY OF CONTRA COSTA**

24 SAM CLEARE, SARAH KINCAID,
25 JEREMIAH ROMM, HILDA CRISTINA
26 HUERTA, AND JETAUN THOMPSON

27 Petitioners,

28 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

**NOTICE OF MOTION AND MOTION
FOR NEW TRIAL (CCP § 657, 659);
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Judge: Hon. Terri Mockler
Dept.: 27

1 **NOTICE OF MOTION AND MOTION**

2 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that, on a date and time set by the Court as soon as the Court is
4 available, Petitioners will and hereby do move for a new trial on the petition for a writ of mandate
5 under Code of Civil Procedure sections 657, 659.

6 On October 11, 2024, this Court held a merits hearing on Petitioner’s petition for a writ of
7 mandate to compel Respondents to follow Education Code sections 35186 and 44830 with respect
8 to various administrative complaints about certain school facility conditions and teacher vacancies.
9 The Court denied the writ petition orally and in a minute order on October 11. Petitioners now
10 seek a new trial on the merits of their petition on the basis that the prior decision reflected an error
11 in law, invited by Respondents’ misstatements, as well as on the basis of newly discovered
12 evidence that was not available at the time of the October 11 hearing.

13 The Motion is made on the following grounds. A new trial—or a new hearing on the
14 merits of a writ petition—may be granted if there was an “[e]rror in law” or there is “[n]ewly
15 discovered evidence” that could not have been produced at the trial. (Code of Civ. Proc. § 657(4),
16 (6), (7).) At the hearing, Respondents made a number of legal and factual statements concerning
17 their ability to follow the Education Code with respect to Petitioners’ administrative complaints,
18 which led the Court erroneously to deny the writ petition. Petitioners now present declarations
19 from the Executive Director of the California Commission on Teacher Credentialing as well as
20 from the executive director of the local teachers’ union to correct the false record created by
21 Respondents’ misstatements that were the basis of the Court’s erroneous decision. Petitioners
22 seek a new trial to vacate the prior erroneous decision, and to obtain a writ petition compelling
23 Respondents to follow the law as outlined in Petitioners’ Petition for Writ of Mandate (filed July
24 19, 2024) and Motion to Issue Writ of Mandate (filed Aug. 30, 2024).

25 A motion for new trial is timely if made at least before 15 days after service of entry of
26 judgment (or 180 days after entry of judgment). (Code Civ. Proc. § 659(a)(2).) Judgment has not
27 been entered in this case, so this Motion is timely. Petitioners have attempted to obtain an agreed-
28 upon proposed judgment from Respondents’ counsel but have not been able to do so, despite

1 multiple attempts, and so Petitioners submitted a proposed judgment that is pending review. (See
2 Notice of Submission of Proposed Order and Judgment (Dec. 18, 2024).)

3 This Motion is based on this Notice of Motion and Motion; the attached Memorandum of
4 Points and Authorities; the concurrently filed Declarations of Dr. Mary Vixie Sandy, Mark
5 Mitchell, and Karissa Provenza; all other pleadings and papers on file in this action; such matters
6 of which the Court may properly take judicial notice; and such other evidence and argument as
7 may be presented at or before the hearing on the Motion.

8

9 DATED: December 23, 2024

Respectfully submitted,

10

By: s/ John T. Affeldt

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Karissa A.D. Provenza

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PUBLIC ADVOCATES INC.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Petitioners move for a new trial to correct critical errors of law in the Court’s decision
4 denying the writ petition, which appear to result from misstatements of law by Respondent West
5 Contra Costa Unified School District (“WCCUSD” or the “District”).

6 This Court’s ruling marks the first time that Petitioners are aware of in the long history of
7 California public education that a court has held that a school district can continue to staff
8 classrooms with illegal, uncertified personnel. The result is no more permissible than allowing
9 unlicensed individuals to practice law before this Court or medicine in local hospitals. Many of
10 the unqualified individuals at issue are now in their fourth month of teaching at Helms Middle
11 Schools, despite the fact that given their lack of qualifications, state law prohibits them from being
12 assigned to any classroom for more than 30 days. The Court was led to conclude these individuals
13 “are provisionally qualified [and] at least are there giving the kids some modicum of education,”
14 (Declaration of Karissa Provenza (“Provenza Decl.”), Ex. A (Oct. 11, 2024 R.T. at p. 31:17–19)),
15 but both conclusions are legal error. As demonstrated below, such individuals are wholly
16 unqualified and uncertified. Moreover, the State considers instruction from such uncertified
17 individuals to be precisely *not* among the “educational activities” state funds are permitted to
18 support. (Ed. Code § 46300(a); fn. 2, *infra*.)

19 Even worse, the Court’s refusal to order the District to fill certificated positions only with
20 certified personnel provides WCCUSD a unilateral *carte blanche* to utilize other uncertified
21 persons—parents, undergraduates, classroom aids without B.A.’s, etc.—whenever it next decides
22 that lawfully authorized personnel are “too hard” to find. Meanwhile, students at Helms and in
23 other classrooms across the district are losing irreplaceable educational opportunities while
24 receiving instruction from potentially well-meaning but wholly unqualified classroom proctors.

25 Accompanying this motion are declarations—from the Executive Director of the California
26 Commission on Teacher Credentialing (CTC), Dr. Mary Vixie Sandy and the Executive Director
27 of the local teachers’ union, Mark Mitchell—correcting Respondents’ misstatements and
28 clarifying state certification laws. The declaration from Dr. Sandy of the CTC also explains the

1 profound negative impact the Court’s ruling could have on the quality of the state’s educator
2 workforce.

3 There is no dispute that the District is violating state law that mandates that every
4 classroom be staffed by a single designated, certificated year-long teacher. (Ed. Code
5 § 35186(h)(3).) The District has conceded that it is violating that mandate by staffing multiple
6 classrooms with uncertificated, unqualified substitutes working beyond their authorization. The
7 Court, nonetheless, refused to grant a writ requiring compliance with the Education Code based on
8 the District’s assertion that it is doing all it can to fill the vacancies. The Court explained that,
9 given the District’s representations, it could not “make the school district do anything that they
10 aren’t already doing” since the District “is well aware of the issues” and is “doing the best they
11 can with the limited pool of substitutes and teacher[s].” (Provenza Decl. Ex. A at pp. 30:6–9,
12 31:23–24.) This was error for two reasons.

13 ***First***, there is much the District could do but is not. The District could, for example,
14 reassign credentialed teachers from administrative or other non-teaching positions. At the hearing
15 and in its opposition brief, the District claimed that it is barred from doing so under the MOU with
16 the teachers’ union, the United Teachers of Richmond (UTR). (Provenza Decl. Ex. A at p. 19:10–
17 13.) The Court accepted that representation. (See *id.* at p. 31:5–12 [The Court: “And then you’ve
18 got, as [WCCUSD counsel] mentioned, you’ve got the issue of unions, of the teachers who are
19 credentialed who are regular teachers. They have MOUs. They have rights under the MOUs. The
20 school district is not free to just say, ‘Hey, you with your math and science background, you’re
21 going to go teach at Helms.’ They don’t have the right to do that.”].) Petitioners have confirmed
22 that is simply untrue. The accompanying declaration from Mark Mitchell, the Executive Director
23 of UTR, explains that the District has filled many vacancies through involuntary transfers under
24 Education Code § 35035(e). (Declaration of Mark Mitchell (“Mitchell Decl.”) ¶¶ 5-6). And just
25 this past month, the District contradicted its own protestations of impossibility by announcing it
26 will involuntarily transfer 40 teachers from non-teaching positions to fill vacancies. (*Id.* ¶ 6.)
27 Despite this maneuver, the four current vacancies at Helms, and one new vacancy at Stege that are
28 the subject of the writ petition have not been filled; and, despite this “newfound” assignment

1 practice, the District is nevertheless continuing its illegal practice of using uncertified expired
2 substitutes to fill vacancies at Helms, Stege and elsewhere across the District. (*Id.* ¶ 7.)

3 Moreover, the declaration from the CTC and Education Code provisions confirm that
4 WCCUSD can seek waivers from state agencies as a last resort if it can find no other way to
5 comply with the Education Code’s mandates regarding certificated teachers. The night before the
6 hearing, and at the hearing, the District claimed for the first time that it could not seek waivers
7 from the CTC because none of the people filling the vacancies at Helms qualify for a waiver.
8 (Supp. Alberts Decl. ¶ 8.) The District argued that, as a result, there is nothing more it could do to
9 fill vacancies under the law. (Provenza Decl. Ex. A at pp. 20:7–21:13.) The Court appears to
10 have accepted this representation, but it is simply untrue. The Legislature has broadly empowered
11 the Commission to waive certification provisions of the Education Code and the California State
12 Board of Education (the SBE) to waive an even broader range of the Education Code, including a
13 school’s statutory duty to remedy complaints established by the *Williams* settlement. (Declaration
14 of Dr. Mary Vixie Sandy (“Sandy Decl.”) ¶ 14; Ed. Code § 44225(m)(1)(D), (E); Ed. Code §§
15 33050-33053.) Again, there is much the District can do to comply with the Education Code,
16 including seeking and obtaining the appropriate waivers.

17 ***Second***, and more fundamentally, the Court erred in unilaterally absolving the District of
18 its legal obligation to provide all students with a year-long, certificated teacher based on the
19 District’s assertion that it is unable to comply with the Education Code. No provision of the law
20 grants this Court the authority to waive the Legislature’s mandates to comply with state
21 certification laws or the *Williams* minimum teacher standards. Instead, if compelling hardships
22 are present, the Legislature has given the authority to grant waivers to expert agencies, who have
23 resources and knowledge on these issues that the Court does not have. (*Communities for a Better*
24 *Env’t v. State Water Res. Control Bd.* (2003) 109 Cal.App.4th 1089, 1104.) These state agencies,
25 the CTC and the SBE, have the sole authority to grant a waiver if necessary, and to condition any
26 waiver on further action by the District as appropriate. The agencies can also ensure that the
27 District’s recruitment, hiring, and assignment practices and efforts are reasonable and consistent
28 with those of other school districts. By denying the writ petition, the Court has, in effect,

1 substituted its judgment as to whether the District is “doing the best it can” for the judgment of
2 expert agencies. This is a critical error of law and a violation of separation of powers. (See *In re*
3 *Cabrera* (2012) 55 Cal.4th 683, 688.) The Court should enforce the legislative scheme and
4 support the authority of the expert agencies to supervise school districts by ordering WCCUSD to
5 comply with the law.

6 Based on these declarations and the arguments below responding to contentions made by
7 the District—some for the first time at the hearing or the night before—Petitioners respectfully
8 request the Court grant Petitioners’ writ prohibiting the District from assigning uncertified
9 individuals to certificated positions; directing the District to fill vacancies with only year-long
10 properly certificated teachers; and, if the District believes such is impossible, ordering it to follow
11 the statutory processes for seeking waivers from the proper state agencies.

12 In addition, Petitioners renew their request for an order directing the District to follow
13 required *Williams* procedures to respond to and remedy valid complaints within 45 and 30
14 working days, respectively. Though Respondents’ counsel asserted at the hearing that the
15 District’s failure to respond to the 45 Stege facility complaints after 15 months was a one-off
16 “aberration” (“Provenza Decl.”), Ex. A (Oct. 11, 2024 R.T. at p. 38), that too has since been
17 proven a misstatement. Highland Elementary School complaints, pending at the time of the
18 October 11th hearing, have gone unanswered and unaddressed despite the lapse of 45 working
19 days since their filing. (“Provenza Decl.” ¶¶ 5-7)

20 **II. LEGAL & FACTUAL BACKGROUND**

21 **A. The Vacancies At Issue**

22 The details of this matter are laid out in Petitioners’ writ petition and motion for issuance
23 of writ. Petitioners provide only a brief summary here. On January 31, 2024, Petitioners filed
24 three *Williams* complaints with WCCUSD regarding a total of 12 vacancies at Stege, Helms, and
25 Kennedy. The District acknowledged the existence of these vacancies and conceded that it was
26 unlawfully covering each vacancy with substitutes working beyond their authorized 30-day limit
27 or teachers covering on a day-to-day basis. (Petn. Ex. 8 at p. 3 [“The District acknowledges it is
28 out of compliance[.]”].) Between the time the complaints were filed in January and the end of the

1 school year, the District made no attempt to fill any of the vacancies lawfully.

2 On July 19, 2024, Petitioners filed a petition for a writ of mandate to address the District’s
3 refusal to act to fill the 12 vacancies lawfully and its illegal reliance on substitutes. Finally
4 spurred to action, the District then addressed nine of the vacancies, although three of the vacancies
5 were “resolved” by the District cancelling those classes. As to the other six, the District assigned
6 lawful, minimally certificated personnel using methods Petitioners had suggested upon filing the
7 complaints, but which the District had previously neglected to pursue. At the time the District
8 filed its opposition, three vacancies still remained, two at Helms and one at Kennedy. The District
9 conceded that two additional vacancies had then arisen at Helms and another at Kennedy.
10 Currently, Helms has four total vacancies in Science, English, and Math, and Stege has one
11 vacancy in 5th grade. (Mitchell Decl. Ex. C (UTR - 24-25 HR Certificated Vacancy Report.)

12 **B. The Vacancies Clearly Violate State Law**

13 There is no dispute that the District is violating state certification law with its use of
14 uncertificated personnel—substitutes who have stayed beyond their 30- (or 60-day)
15 authorization—in the (now) four vacancies at Helms. (See Cal. Code Regs., Tit. 5, §§ 80025;
16 80025.1(a)(4).) California Education Code Section 44830(a) mandates that “[t]he governing
17 board of a school district shall employ for positions requiring certification qualifications, only
18 persons who possess the qualifications for those positions prescribed by law....” To be
19 “certificated” (or synonymously, “certified”) means to hold the appropriate State-authorized
20 certificate, demonstrating one has the minimal qualifications to teach the specific subject matter(s)
21 and students—e.g., a full California teaching credential, an intern credential, a one-year short-term
22 teaching permit, or a one-year waiver. (See Ed. Code § 44830; Sandy Decl. ¶ 6; see also Provenza
23 Decl. Ex. C (glossary of certification terms).)

24 There is also no dispute that the District is violating the statutory scheme enacted as a
25 result of the *Williams* settlement, which requires that all classrooms be staffed by a single-
26 designated, at least minimally-certificated, teacher for the entire year. (Ed. Code § 35186(h)(3).)
27 The Legislature considered that provision so fundamental to the State’s public education that it
28 mandated that a district “shall remedy a valid complaint” about a teacher vacancy or

1 misassignment within 30 working days of the complaint. (Ed. Code § 35186(b).) So important is
2 the *immediate* substantive remedy—unusual for administrative complaints or requests¹—that
3 section 35186 prioritizes the remedial action well in advance of even the 45 working-day response
4 to the complainant under *Williams*. (*Ibid.*) Moreover, when auditors are able to discern that a
5 District has staffed a class with an uncertified teacher, state law subjects districts to a loss of state
6 funds for every day the uncertified individual is rendering services as a teacher. (See Ed. Code
7 § 60150.) These provisions only further support the notion that the *Williams* mandate means what
8 it says: Filling vacancies with uncertified individuals is categorically prohibited and must be
9 immediately remedied. Excuses, hand-wringing, inaction and even good-faith but unavailing
10 efforts have no place in the State’s equation. To staff a classroom with an uncertified individual
11 does not constitute what the State considers an educational activity worthy of public fiscal support.
12 The District’s mandatory duty is to immediately provide a legally certified teacher.²

13 There is ample reason for the Legislature to demand that the District staff each classroom

14 _____
15 ¹ See, e.g., Cal. Code. Regs. Tit. 5, §§ 4630–4631. For a typical Uniform Complaint Procedure
16 (UCP) complaint (the state’s general education complaint process in which *Williams* complaints
17 are embedded), there is no automatic right to a “remedy” within 30 days—unlike *Williams*
18 complaints which require a 30-day remedy. For example, districts must investigate complaints of
19 unlawful discrimination, harassment, intimidation or bullying, within 60 days of receiving the
20 complaint, with the ability to extend the investigation with written agreement of the complainant.
(Cal. Code. Regs., Tit. 5, §4631(a).) The district is required to send a written investigation report
to the complainant within 60 days from receiving the complaint. (Cal. Code. Regs. Tit. 5,
§4631(e)). If there is merit in the complaint, the district must take corrective actions. (Cal. Code.
Regs., Tit. 5, §4631(e)(3).)

21 ² Various state laws determine the precise formula for allocating state educational funds and
22 ensuring that districts expend those funds legally. (See, e.g., Ed. Code § 42238.05.) California
23 allocates its funds based on a district’s “average daily attendance” in which the computation is
24 based on “the attendance of pupils while engaged in educational activities required of those pupils
25 and *under the immediate supervision and control of an employee of the district. . . who possessed*
26 *a valid certification document, registered as required by law.*” (Ed. Code § 46300(a) [italics
27 added].) The State’s Guide to the annual auditing of school districts specifically directs auditors
28 to find unlawful exceptions and calculate a fiscal penalty when they identify uncertified
individuals assigned to teaching positions. (Provenza Decl. Ex. D (State Audit Guide) at p. 8.)
The California Education Code details precisely how the fiscal penalty for uncertified persons is to
be calculated (Ed. Code § 45037(a)–(b)), and further instructs that county offices of education,
which issue the warrants for district employee salaries, shall also be fiscally penalized where they
pay out salaries to such uncertified district personnel whom the county knew or could have known
was uncertified. (*Id.* § 45037(c).)

1 with a trained certified teacher, rather than substitutes. As CTC Executive Director, Dr. Sandy,
2 explains, “substitutes are required to possess only a baccalaureate degree” and it need not be a
3 degree in the actual subject they are teaching. (Sandy Decl. ¶ 7 [citing Education Code sections
4 44252 and 44300].) They are also not “required to have had any training in pedagogy in a teacher
5 preparation program.” (*Ibid.*) Substitutes also lack training “in how to address the specialized
6 needs of the students found in most California public school classrooms, particularly special
7 education students and English Learners.” (*Ibid.*; see also Ed. Code §§ 44253.1-44253.6; Cal.
8 Code of Regs., Tit. 5, §§ 80015-80016; 20 U.S. Code § 1703; see also *Lau v. Nichols*, (1974) 414
9 U.S. 563, 566.) Because substitutes generally lack any training in education, they are authorized
10 to teach in any one classroom *only* for 30 or 60 days. (See Cal. Code Regs., Tit. 5, §§ 80025;
11 80025.1(a)(4).) Respondents acknowledge they are in violation of the *Williams* mandate and state
12 credentialing laws.

13 **C. The Writ Was Denied Based on The District’s Claims of Hardship.**

14 Despite the District’s undisputed violations of state law, the Court denied the writ and
15 declined to order the District to follow its mandatory duties. On the eve of the hearing,
16 Respondent filed a supplemental declaration stating that the remaining Helms substitutes are not
17 eligible for typical CTC variable-term waivers. (Supp. Alberts Decl. ¶ 8.) During the hearing,
18 Respondents again claimed that there is no CTC waiver option available to the District with
19 respect to these vacancies. (Provenza Decl. Ex. A at p. 19:2–9). Further, in response to
20 Petitioners’ recommendation that the District involuntarily transfer fully-credentialed teachers
21 from other assignments, the District argued at the hearing that it is limited from doing so by the
22 MOU with UTR. (*Id.* at p. 19:10–19). Relying on the District’s assertions that it was doing all it
23 could to fill the vacancies, the Court stated that it would deny the writ petition. (*Id.* at p. 31:5–24.)

24 The Court denied the writ orally on October 11, 2024 and entered a corresponding minute
25 order. The Court has not yet entered judgment in the case.

26 **III. LEGAL STANDARD**

27 “[A] verdict may be vacated and any other decision may be modified or vacated, in whole
28 or in part, and a new or further trial granted on all or part of the issues” when, as pertinent here,

1 there is material evidence, which “could not, with reasonable diligence, have [been] discovered
2 and produced at the trial”; the decision is “against law;” or an “error in law” exists. (Code Civ.
3 Proc. § 657(4); 647(6); 657(7); see, e.g., *McCarty v. State of California Dept. of Transp.* (2008)
4 164 Cal.App.4th 955; *Collins v. Sutter Mem’l Hosp.* (2011) 196 Cal.App.4th 1, 17.) “[T]he
5 hearing and determination of the motion for a new trial shall have precedence over all other
6 matters except criminal cases, probate matters, and cases actually on trial, and it shall be the duty
7 of the court to determine the motion at the earliest possible moment.” (Code Civ. Proc. § 660(b).)

8 **IV. ARGUMENT**

9 The Court denied the writ petition—thereby permitting the District to continue staffing
10 classrooms with illegal, uncertificated personnel contrary to statute—based on the District’s
11 claims that there is nothing more it can do given the ongoing teacher shortage. At the hearing, the
12 District claimed that it has exhausted all available options. But Petitioners have since confirmed,
13 as explained in the accompanying declarations from Dr. Sandy and Dr. Mitchell, that the District
14 has multiple options to comply with the law including involuntarily transferring teachers from
15 administrative positions and—if, and only if, all other options are exhausted—seeking waivers
16 from state agencies.

17 The CTC declaration and the SBE waiver provisions reinforce the fact that it is the
18 purview of these supervisory agencies—not the unilateral decision of a District and not the views
19 of the courts—to determine whether a district deserves a waiver from California’s credentialing
20 statutes. Only a state agency, such as the CTC or the SBE—has the authority to evaluate the
21 merits of a district’s hardship claim. The Court has no authority to grant a waiver from the
22 Education Code’s requirements. The Court’s denial of the writ based on its determination that the
23 District is doing all that it can is contrary to state certification laws and the Legislature’s *Williams*
24 mandate.

25 **A. The Court Erred in Accepting the District’s Assertion That It Can Do Nothing** 26 **More to Address Teacher Vacancies**

27 The Court’s determination—based on inaccurate representations from the District—to
28 deny the writ because the District is doing “the best they can with the limited pool of substitutes

1 and teacher[s]” (Provenza Decl. Ex. A at p. 30:8–9), relies on the District’s erroneous explanation
2 of the law. Contrary to WCCUSD’s assertions, the law requires the District to remedy teacher
3 vacancies with only year-long certificated teachers—and where the District claims it is unable to
4 meet established legal requirements, that it follow the mandatory state processes for lawfully
5 seeking any such state-approved waiver before the proper state agencies—regardless of its self-
6 proclaimed hardship determination. (Sandy Decl. ¶¶ 10-11; Ed. Code §§ 35186(h)(3); 44830(a).)
7 Petitioners recommended numerous lawful ways for the District to fill each vacancy at issue in
8 their writ petition and motion for writ. (Petn. ¶¶ 41–46; Mot. at p. 20.)

9 In response, the District acknowledged it is in violation of the law but incorrectly asserted
10 to the Court that it has exhausted all lawful ways to fill each vacancy. Specifically, the District
11 asserted that: (a) the MOU with the teachers’ union prevents the District from transferring fully-
12 certified teachers; and (b) after all briefing was submitted, through a supplemental declaration, that
13 the law does not permit the District to seek waivers for the current non-certificated substitutes in
14 the classroom, and therefore it is impossible for the District to comply with the law. (Supp.
15 Alberts Decl. ¶) The District also emphasized these arguments at the hearing. But both assertions
16 are demonstrably erroneous, as shown by the declarations from the UTR Executive Director and
17 CTC Executive Director.

18 **1. The District Inaccurately Stated That It Could Not Fill Teacher**
19 **Vacancies Through Involuntary Transfers**

20 The Court relied on the District’s assertion that the MOU with UTR precludes the use of
21 involuntary transfers to fill vacancies except in the case of school closures or staff reductions at a
22 school due to declining enrollment. The Court accepted counsel’s misleading representation of the
23 MOU. (“The school district is not free to just say, ‘Hey, you with your math and science
24 background, you're going to go teach at Helms.’ They don't have the right to do that.”) (Provenza
25 Decl. Ex. A at p. 31:5-12.)

26 The District’s statements to the Court were wrong. Mark Mitchell, Executive Director of
27 UTR, explains in his declaration that the MOU does not preclude the use of involuntary transfers.
28 To the contrary, it remains within a district superintendent’s general authority to direct involuntary

1 transfers “in the best interest of the school district.” (Ed. Code § 35035(e).) Indeed, despite the
2 District’s suggestions to the contrary, Petitioners have recently learned that the District plans to
3 involuntarily transfer 39 teachers this coming month from out-of-classroom assignments (e.g.,
4 literacy coach) specifically to fill vacancies. Mr. Mitchell confirms that last school year the
5 District transferred, involuntarily, approximately 30 teachers to fill vacancies at other schools.
6 (Mitchell Decl. ¶ 6.) And between August 2024 and November 2024—while this case was being
7 briefed and argued—the District involuntarily transferred approximately 20 teachers to fill
8 vacancies. (*Id.*) The District can and regularly does involuntarily transfer teachers in instances
9 not involving school closures or staffing reductions.

10 The Court relied on the District’s assertion that fully credentialed teachers cannot be
11 reassigned from District office positions or other non-essential out-of-classroom assignments.
12 (See Provenza Decl. Ex. A at p. 31:5-12.) But that is precisely what the California Legislature and
13 the law compel here. Other than a superintendent, there is no mandatory district office position.
14 Though many important supplemental functions may be served by certificated teachers serving in
15 a non-teaching position, the Legislature has *mandated* that, first and foremost, classroom
16 instructional positions be filled by certificated staff for the entire school year before discretionary
17 district office positions. (Ed. Code §§ 35186(h)(3); 44830(a).) As such, the law compels the
18 District to utilize voluntary *and involuntary* transfers to fill vacancies before it can pursue lesser
19 qualified teachers or waivers. (Ed. Code § 44225.7.) The District failed to do so in violation of
20 state certification laws and its mandatory duties under *Williams*. The Court’s conclusion that the
21 District is barred from doing so by the MOU with the union is erroneous.

22 **2. The District Can Seek Waivers From the CTC to Satisfy State**
23 **Credentialing Provisions and *Williams* Requirements**

24 The Court also relied on the District’s assertion—made for the first time the night before
25 the hearing and at the hearing—that variable-term waivers issued by the CTC are inapplicable to
26 the vacancies at issue here. (Alberts Decl.; Provenza Decl. Ex. A at p. 19:5-9.) The District
27 claimed that such waivers are limited only to the certain standard practices described in the CTC
28 waiver handbook. (*Id.*) This is a misstatement of law. As explained by the Executive Director of

1 the CTC, Dr. Sandy, under Education Code section 44225(m), the CTC has “broad waiver
2 authority” to waive certification provisions of the Education Code, including by providing
3 exemptions from credential requirements for districts or regions “with a severely limited ability to
4 develop personnel” or, even more generally, “temporary exemptions when deemed appropriate by
5 the commission.” (Sandy Decl. ¶ 11; Ed. Code § 44225(m); *id.* (m)(1)(D), (E).)

6 If WCCUSD is facing hardship filling vacancies with year-long certificated teachers, the
7 statutory remedy for WCCUSD is not to ignore the Legislature’s credentialing mandates but to
8 present that hardship to CTC and seek a waiver. WCCUSD claims that it has not sought a CTC
9 waiver for the Helms vacancies because the individuals assigned to those classrooms do not meet
10 the requirements for a standard variable-term waiver because “one substitute teacher does not have
11 the required amount of college credits, one substitute teacher has yet to enroll in a credential
12 program, and the remaining substitute teacher will not agree to enroll in a credentialed program.”
13 (Supp. Alberts Decl. ¶ 8; Provenza Decl. Ex. A at p. 20:7–17.) But Dr. Sandy’s declaration
14 confirms that the Commission has broad discretion to issue a waiver even if all of the conditions
15 for a standard “variable-term waiver” are not met. (Sandy Decl. ¶¶ 11, 13; *Waiver Requests*
16 *Guidebook for Employers* (rev. ed. 2024) Commission on Teacher Credentialing Ensuring Teacher
17 Quality <[https://www.ctc.ca.gov/docs/default-](https://www.ctc.ca.gov/docs/default-source/credentials/manualshandbooks/waiverhandbook.pdf?sfvrsn=0)
18 [source/credentials/manualshandbooks/waiverhandbook.pdf?sfvrsn=0](https://www.ctc.ca.gov/docs/default-source/credentials/manualshandbooks/waiverhandbook.pdf?sfvrsn=0)> [as of Dec. 20, 2024] at p.
19 3 [variable-term waivers include, *inter alia*, “other temporary conditions approved at the discretion
20 of the Commission.”].)

21 WCCUSD admits it has not sought waivers for the vacancies at issue at Helms despite its
22 legal obligation to provide year-long certificated teachers and despite the waiver process provided
23 by the Legislature. If WCCUSD believes it cannot meet its legal obligations, it must—after
24 exhausting all other options—seek a waiver from the CTC. WCCUSD thus has not done
25 everything it can, and the Court erred in holding otherwise.

26 **3. The District Can Seek Waivers From the State Board of Education to**
27 **the State’s *Williams* Mandate**

28 Separately, the District can also apply for a waiver of the *Williams* vacancy remedy before

1 the SBE. Whereas the CTC has sole authority to waive state certification requirements (Ed. Code
2 § 44225(m)(2)), the SBE has the “general authority to waive most provisions of the education
3 code and Title 5 regulations,” and there is no statutory exclusion of the *Williams* vacancy remedy
4 mandated in section 35186 from that broad reach. (Ed. Code §§ 33050-33053.)

5 The District failed to seek such a waiver. As such, the Court further erred in relying on the
6 District’s claim that it is “doing everything [it] can” to comply with *Williams*. (Provenza Decl.
7 Ex. A at p. 21:7.)

8 **B. Expert State Agencies, Not the Courts, Are Empowered to Test WCCUSD’S**
9 **Claims of Hardship and Grant Waivers**

10 Dr. Sandy’s declaration also explains that these expert agencies—not the courts—are the
11 proper bodies to evaluate the District’s hardship assertion. By denying the writ petition and
12 making the determination that the District is doing “everything they can . . . to get a qualified year-
13 long assignment” (Provenza Decl. Ex. A at p. 21:7–8) to fill the vacancies at issue—before expert
14 agencies have even weighed in on the question—the Court improperly intruded upon the expertise
15 and responsibilities of these state agencies. It is black-letter law that courts “extend appropriate
16 deference to [] administrative agencies . . . and their technical expertise.” (*Communities for a*
17 *Better Env’t, supra*, 109 Cal.App.4th at pp. 1103–1104.) For this reason, courts are generally
18 required to “defer to an administrative agency’s interpretation of a statute or regulation involving
19 its area of expertise.” (*Ibid.*) Indeed, “the substitution of the judgment of a court for that of the
20 administrator in quasi-legislative matters would effectuate neither the legislative mandate nor
21 sound social policy.” (*In re Cabrera, supra*, 55 Cal.4th at p. 688.)

22 Here, the Court’s ruling inappropriately usurps the expert agencies’ authority to decide in
23 the first instance whether WCCUSD should be relieved from the state’s certification laws and the
24 mandatory *Williams* vacancy remedy because of district hardships. If the District has specific
25 hardships that deserve consideration and may warrant exemptions from mandatory state
26 requirements imposed on local districts, the appropriate state officials—not districts on their own
27 and, at least not in the first instance, courts—must evaluate and respond to such claims.

28 The Legislature’s mandate in section 35186 establishing a bright line duty to provide a

1 minimally-certified year-long teacher created no room for good faith exceptions for districts that
2 are “trying hard” and no mechanism for courts to excuse compliance. Indeed, as Dr. Sandy
3 explains: “It would create chaos for the quality of our public-school teacher workforce if districts
4 were to unilaterally decide when they could relieve themselves of the general requirement to
5 assign only certified individuals to certificated positions long-term,” as WCCUSD has
6 acknowledged it is doing here by assigning 30-day substitutes to teach a single classroom for the
7 entire year. (Sandy Decl. ¶ 9.)

8 The Legislature has established a system for districts to seek relief from a state certification
9 requirement by seeking a waiver from the CTC or SBE. The law is summarized by Dr. Sandy:

10 When districts unilaterally assign uncertified individuals to certificated classroom
11 positions as teacher of record, they do so *in violation of mandatory state*
12 *certification laws established to ensure minimum teacher quality standards* for the
13 state’s students. (Education Code section 44001). When districts conclude they are
14 not able to identify suitably qualified teachers that would satisfy established state
15 certification requirements, *they have no authority to unilaterally ignore those*
16 *certification requirements*. Instead, they must seek local assignment options, have
their local board approve a Limited Assignment Permit for a fully credentialed
teacher, or apply for a waiver from the Commission. When a district, such as
WCCUSD in this instance, refuses to test its hardship conclusions before the
Commission by seeking a waiver through the required processes, the Commission’s
authority and expertise in upholding minimum teacher quality standards are evaded
and usurped.

17 (Sandy Decl. ¶ 15 [italics added].)

18 Similarly, it is the role of the SBE to determine whether the District is unable to comply
19 with its mandatory duties under *Williams*. As with the CTC and state certification provisions, it
20 would prove chaotic and undermine state accountability requirements were districts to decide
21 unilaterally when they may be relieved of providing the baseline educational necessities mandated
22 by the *Williams* settlement legislation. Instead, the only means under state laws by which a
23 district could be excused from compliance with its mandatory *Williams* obligations would be
24 through a waiver from the SBE under that agency’s general waiver authority. (Ed. Code §§
25 33050-33053.)

26 Thus, it is unlawful for WCCUSD to excuse itself from remedying the Helms vacancies
27 with year-long, certified teachers due to self-proclaimed hardship. It is the role of the CTC and
28 the SBE to use their expertise to assess the District’s hardship assertions. By denying the writ

1 petition in reliance on the District’s hardship assertions, the Court improperly provided the District
2 with a *de facto* waiver without any legal authorization. Nothing in the statutory scheme permits
3 the Court to excuse WCCUSD’s failure to comply with state law. Rather, the Legislature has
4 determined that these agencies and their staff have the expertise and responsibility to determine
5 whether a waiver is warranted in the first instance.

6 Ultimately, the CTC and State Board have the resources, the knowledge, and the statutory
7 authority to test the District’s assertions that there are no qualified teachers among its nearly 1500
8 certificated personnel to assign to the Helms vacancies; that no qualified retired staff are available;
9 that no minimally certificated candidates exist in its teacher pipeline; and that it cannot do more to
10 hire and assign qualified teachers. It may be that the agencies agree with the District that nothing
11 more can be done with respect to these vacancies. Or perhaps the agencies will point out that
12 WCCUSD has proportionally fewer fully-credentialed teachers than neighboring districts like
13 Pittsburg and Antioch Unified with similarly large populations of low-income students, and
14 suggest or mandate other solutions to the District.

15 The critical point is that the legislative scheme leaves this analysis and determination to
16 expert state agencies—not to the courts. By denying Petitioners’ writ, the Court has allowed
17 WCCUSD to escape the proper oversight for its failure to comply with the law and substituted its
18 judgment for that of the expert agencies.

19 C. **WCCUSD Continues to Ignore Mandatory *Williams* Complaint Procedures**
20 **and Timelines and Should Be Ordered to Do So**

21 The District’s misstatements regarding waivers and its inability to direct involuntary
22 transfers are not its only misstatements to the Court. At the hearing the District claimed that its
23 failure to respond to the 45 facilities complaints at Stege Elementary was an aberration. (Provenza
24 Decl. Ex. A at p. 38:17-23.) But the District’s conduct at Stege is not unique. New facts
25 demonstrate that WCCUSD continues to dodge its duties under *Williams*. Petitioners recently
26 learned that the District failed to provide a response to September 2024 facilities complaints at
27 Highland Elementary School within the statutorily mandated timeframe. (Provenza Decl. ¶¶ 5–7)
28 This occurred despite the District acknowledging receipt of these *Williams* complaints at its

1 October 23, 2024 board meeting and despite the recency of the District’s October 11th assurances
2 to the Court that no court order is needed to compel it to follow the law. (Provenza Decl ¶6; Ex.
3 B.)

4 **V. CONCLUSION**

5 Petitioners respectfully request that this Court correct its error and grant Petitioners’
6 Motion for New Trial and grant, thereby, Petitioners’ writ prohibiting the District from assigning
7 uncertified individuals to certificated positions; directing the District to fill vacancies with only
8 year-long properly certificated teachers; and, if the District believes such is impossible, ordering it
9 to follow the statutory processes for seeking waivers from the proper state agencies.

10 Petitioners further renew their request for an order directing the District to follow required
11 *Williams* procedures to respond to and remedy valid complaints within 45 and 30 working days,
12 respectively, based on the new facts set forth herein.

13

14 DATED: December 23, 2024

Respectfully submitted,

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