

1 John T. Affeldt, S.B. #154430
2 jaffeldt@publicadvocates.org
3 Nicole Gon Ochi, S.B. #268678
4 nochi@publicadvocates.org
5 Karissa A. D. Provenza, S.B. #350737
6 kprovenza@publicadvocates.org
7 PUBLIC ADVOCATES INC.
8 131 Steuart Street, Suite 300
9 San Francisco, CA 94105
10 Telephone: (415) 431-7430

11 Rohit K. Singla, S.B. #213057
12 rohit.singla@mto.com
13 Dane P. Shikman, S.B. #313656
14 dane.shikman@mto.com
15 Kyra E. Schoonover, S.B. #343166
16 kyra.schoonover@mto.com
17 Laura R. Perry, S.B. #342504
18 laura.perry@mto.com
19 MUNGER, TOLLES & OLSON LLP
20 560 Mission Street
21 San Francisco, CA 94105
22 Telephone: (415) 512-4000

23 *Counsel for Petitioners*

24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
25 **COUNTY OF CONTRA COSTA**

26 SAM CLEARE, SARAH KINCAID,
27 JEREMIAH ROMM, HILDA CRISTINA
28 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

**NOTICE OF MOTION AND MOTION
TO ISSUE WRIT OF MANDATE TO
COMPLY WITH ED. CODE § 35186**

Judge: Hon. Terri Mockler

Dept.: 27

Date: ~~October 4, 2024~~

Time: ~~8:30 am~~

hearing set:
10/23/2024
9:00 am
dept 27

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NOTICE OF MOTION AND MOTION

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

PLEASE TAKE NOTICE that on October 4, 2024 at 8:30 am, in Department 27 in the above-listed Court, Petitioners, pursuant to Code of Civil Procedure sections 1085 and 1086, will and hereby do move for the issuance of a writ of mandate against Respondents, compelling them to comply with Education Code section 35186.

The Motion is made on the following grounds. Education Code section 35186 provides that school districts “shall remedy” valid complaints regarding facilities conditions and teacher vacancies, and “shall report” the resolution to the complainants. (Ed. Code § 35186 (b).) These duties are mandatory. Petitioners submitted 45 valid complaints to Respondents regarding facilities conditions, and 3 complaints regarding teacher vacancies, but Respondents have not remedied those complaints or reported their resolution to the complainants. Respondents have therefore violated their mandatory duties to remedy and report resolution of Petitioners’ complaints. In the alternative, Respondents have abused their discretion in failing to address Petitioners’ complaints. Petitioners seek a writ compelling Respondents to comply with their statutory duties to remedy the complaints.

This Motion is based on this Notice of Motion and Motion; the attached Memorandum of Points and Authorities; the concurrently filed Declarations of Samantha Cleare, Jeremiah Romm, Hilda Cristina Huerta, and Karissa Provenza; the Proposed Order; all other pleadings and papers on file in this action, including the Verified Petition for Writ of Mandate (CCP § 1085) and Complaint for Injunctive and Declaratory Relief; such matters of which the Court may properly take judicial notice; and such other evidence and argument as may be presented at or before the hearing on the Motion.

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DATED: August 30, 2024

Respectfully submitted,

By: s/ Karissa A.D. Provenza
 Karissa A.D. Provenza

PUBLIC ADVOCATES INC.
John T. Affeldt
Nicole Gon Ochi
Karissa A.D. Provenza

By: s/ Dane P. Shikman
 Dane P. Shikman

MUNGER TOLLES & OLSON LLP
Rohit K. Singla
Dane P. Shikman
Kyra E. Schoonover
Laura R. Perry

Counsel for Petitioners

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Motion seeks the issuance of a writ ordering a school district to comply with its
4 statutory duties to remedy complaints about dangerous facilities conditions in a school and illegal
5 teacher vacancies.

6 Students in certain schools in West Contra Costa Unified School District (“WCCUSD” or
7 “The District”) have been neglected in violation of the District’s statutory duties to all its students.
8 First, Stege Elementary School is not safe. It has mold-infested classrooms, opaque windows that
9 will not open, classroom temperatures exceeding 90 degrees, and broken floor tiles. The
10 WCCUSD Board of Education president herself called the situation “heartbreaking.” Second, that
11 school, in addition to Helms Middle School, and John F. Kennedy High School, have numerous
12 classrooms lacking a qualified, permanent teacher. Instead the District has relied on a rotating cast
13 of substitutes in many classrooms, substitutes working beyond their legal authorization, or
14 teachers stepping in to cover on a day-to-day basis.

15 Pursuant to the statutory regime designed to address these issues, Petitioners submitted
16 administrative complaints about these conditions and practices. The District, however, declined to
17 remedy the issues or, in some instances, even to respond to Petitioners’ complaints. The law does
18 not allow the District to ignore Petitioners’ complaints. To protect the fundamental constitutional
19 right every child in this State has to a public education, California Education Code section 35186
20 provides that school districts “shall remedy” valid complaints promptly and “shall report” the
21 resolution shortly thereafter. (Ed. Code § 35186 (b).) WCCUSD has violated these duties.

22 With respect to the dangerous facilities at Stege Elementary, the District has failed to
23 remedy dozens of valid complaints. Indeed, the District has not even provided a substantive
24 response to these complaints. The District knows it is out of compliance, but to avoid
25 accountability it falsely reported at a public board meeting that there were “0” *Williams*
26 complaints, when in fact there were 45 on the Stege facilities issues alone. (Petn. ¶ 30.) A writ
27 should issue to obligate the District to do what the law requires: to remedy the facilities
28 complaints and communicate the proffered resolution to the complainants. Petitioners do not seek

1 an order dictating the precise manner in which these facilities are restored to safe and working
2 condition, only that the District comply with its statutory duties. While the District may argue that
3 it has announced a “rebuild” project and relocated Stege Elementary students to a middle school
4 temporarily, a writ should still issue to hold the District accountable to a workable plan to fix
5 Petitioners’ specific complaints.

6 With respect to the teacher vacancies at Stege Elementary, Helms Middle, and Kennedy
7 High, WCCUSD has also failed to remedy the valid complaints. The law requires that the District
8 fill each teacher vacancy with a “single designated certificated employee” assigned for the “entire
9 year.” (Ed. Code § 35186(h)(3); see also § 44830(a).) Yet numerous teacher vacancies exist in
10 these schools, and the District refuses to fill them with certificated teachers assigned for the entire
11 school year, as required by statute. The District concedes it is violating the law, but claims it is
12 powerless to solve the problems because of a teacher shortage. That is no excuse for the failure to
13 lawfully address the teacher shortage, because the Legislature has provided the District with a
14 myriad of options to *legally* address the issue—even if there is a teacher shortage. The District
15 must use the legal options available to it rather than rely on unauthorized substitutes.

16 WCCUSD’s refusal to remedy Petitioner’s teacher vacancy complaints is damaging to
17 affected students. Quality teachers are the leading school-related factor contributing to a student’s
18 success. That is no surprise: a single, qualified, year-long teacher in the classroom provides
19 consistency and stability, allows students to build a relationship of trust, and permits continuity of
20 instruction—all of which are especially critical for low-income students, students of color, and
21 English learners. WCCUSD’s reliance on substitute teachers—who might not even prepare lesson
22 plans or may lack the capacity or training to support their students—causes irreparable harm,
23 which is precisely why it is illegal. Although WCCUSD points to a teacher shortage, WCCUSD
24 has many more teacher vacancies than its neighboring districts and continuously underperforms in
25 retaining teachers. (Petn. ¶ 5.) A teacher shortage is not to blame.

26 The District’s failure to remedy the teacher complaints has created a crisis situation.
27 Petitioner Cleare, for example, recounts that she spent most of the last year at Stege Elementary
28 trying to teach her own students while also supporting a “seriously underprepared” substitute

1 across the hall, whose yelling was so loud that she would have to close her door to minimize
2 disruption to her own students. (Decl. of Samantha Cleare (“Cleare Decl.”) ¶ 5.) Petitioner
3 Romm attests that teacher vacancies at Helms Middle required the school to cram multiple
4 classrooms of students into the cafeteria for supervision. (Decl. of Jeremiah Romm (“Romm
5 Decl.”) ¶ 3.) Petitioner Huerta describes how when she has to cover a class in addition to her own
6 classroom, she becomes overworked, often has no curriculum to follow, and lacks the ability to
7 grade student work. (Decl. of Hilda Cristina Huerta (“Huerta Decl.”) ¶ 2.)

8 The students in these WCCUSD schools need this Court’s intervention. Stege Elementary,
9 Helms Middle, and Kennedy High serve some of the highest-need student populations, with
10 poverty rates ranging from 84 to 97 percent. (Petn. ¶ 8.) It may not be a coincidence that these
11 are the very students and teachers whose complaints the District has ignored. Whatever the
12 reason, by failing to address Petitioners’ complaints, the District has neglected these schools and
13 their students. Petitioners respectfully request that a writ issue to hold the District accountable and
14 to protect these students’ right to a quality public education.

15 **II. RELEVANT BACKGROUND**

16 **A. The *Williams* Process Is Designed to Enforce Students’ Fundamental,**
17 **Constitutional Right to a Quality Education.**

18 Public education is a fundamental constitutional right for all California students. (*Serrano*
19 *v. Priest* (1971) 5 Cal.3d 584, 608-09.) To protect that right, and in connection with a landmark
20 statewide settlement in *Williams v. California*, the Legislature enacted an administrative process to
21 ensure that school districts provide students with some essential components of a quality
22 education: instructional materials, safe facilities, and qualified teachers. (Ed. Code § 35186.)
23 Under that process, individuals can submit administrative complaints when a school district fails
24 to provide these essentials, and the school district must address and resolve valid complaints
25 within a statutorily-imposed timeframe. Specifically, as relevant here, individuals can submit a
26 complaint to a school principal (or her designee) identifying deficiencies relating to emergency or
27 urgent facilities deficiencies or teacher vacancies. (Ed. Code § 35186(a).) These complaints are
28 known as “*Williams* complaints.” (See Cal. Code Regs., Tit. 5, §§ 4680-4687.)

1 In response to a valid *Williams* complaint on these subjects, the principal (or designee of
2 the district superintendent) “*shall remedy*” the problem “within a reasonable time period but not to
3 exceed 30 working days.” (Ed. Code § 35186(b), italics added). He or she then “*shall report to*
4 the complainant the resolution of the complaint within 45 working days of the initial filing.”
5 (*Ibid.*, italics added; *see also* § 35186(a)(1) [“A complainant who identifies themselves is entitled
6 to a response if the complainant indicates that a response is requested.”].) In enacting section
7 35186, the Legislature intended for “[a]ll complaints . . . to be resolved within 30 days with the
8 complainant notified within 45 days.” (Conference Committee, Analysis of Cal. Senate Bill No.
9 550 (2003-2004 Reg. Sess.) Aug. 26, 2004, italics added; *see also* Ed. Code § 35186(b).)

10 If the complainant is not “satisfied with the resolution,” the complainant may raise their
11 complaint to the district school board. (Ed Code § 35186(c).) For facilities complaints involving
12 an “emergency or urgent threat,” the complainant “not satisfied with the resolution proffered” can
13 appeal to the State Superintendent of Public Instruction (*ibid*; *see also* Cal. Code Regs., Tit. 5,
14 § 4600(u)), who then “shall provide a written report to the state board” regarding “the complaint
15 and, as appropriate, a proposed remedy” for the problem. (Ed. Code § 35186(c).)

16 Finally, separate from any specific complaints, school districts “shall report summarized
17 data on the nature and resolution of all complaints on a quarterly basis to the county
18 superintendent of schools” and publicly to the school board. (Ed. Code § 35186(e).)

19 **B. Factual Background**

20 **1. Facilities Complaints**

21 Stege Elementary’s facilities pose an urgent threat to the health and safety of students and
22 staff, including opaque, broken windows that do not open to permit ventilation or emergency
23 egress, classrooms with no ventilation reaching temperatures over 90 degrees, mold infested walls,
24 and broken floor tiles. (See Petn. Ex. 1 at pp. 7, 14, 20, 35, 38-39, 41, 62-63, 169.) Respondent
25 Superintendent Kenneth Chris Hurst himself described the conditions at Stege as “deplorable.”
26 (Declaration of Karissa Provenza (“Provenza Decl.”) ¶ 7.)

27 After the District failed to fix these issues on its own, Petitioner Cleare submitted 45
28 *Williams* complaints about the facilities at Stege in June 2023, over a year ago, to the Elementary

1 Executive Director who oversaw Stege. Over the past 14 months, WCCUSD has not remedied nor
2 “report[ed] to [] complainants” any proffered resolution of those issues. (Ed. Code § 35186(b).)
3 Indeed, the District did not respond at all for seven months. In December 2023, the District
4 responded with a blanket letter promising only to “provide a substantive response with an update
5 as to the status of its efforts to investigate and remedy the issues” by January 12, 2024. (See Petn.
6 Ex. 2 at p. 2.) But January came and went. Petitioners have received no further response to this
7 day, and certainly no substantive response with a proposed path to remedying the facilities issues
8 at Stege. (Provenza Decl. ¶¶ 4-5.)

9 Four days after the filing of this Petition, the District suddenly announced that Stege will
10 be temporarily closed and students will be “relocate[d]” elsewhere while WCCUSD “rebuild[s]”
11 Stege. (*Id.*, Ex. A.) In the meantime, the District has stated that all 245 students will be bussed to
12 the DeJean Middle school campus, where 384 middle school students are already enrolled.
13 (Provenza Decl. ¶ 9.) The District still has not communicated to complainants—let alone to the
14 community at large—any tangible information about its “rebuild” project, which may take 2-3
15 years to complete. (*Ibid.*) For example, the District has not explained what parts of the school will
16 be rebuilt or whether the rebuild will address all the *Williams* complaints. (*Id.* ¶ 5.)

17 The District also did not report Petitioners’ *Williams* complaints to the school board or to
18 the county in its quarterly report. (Petn. ¶ 30.)

19 **2. Teacher Vacancies**

20 Stege Elementary, Helms Middle, and Kennedy High are plagued by numerous teacher
21 vacancies from Kindergarten to 12th Grade across a wide variety of subjects. (Petn. Ex. 7; see
22 also Petn. ¶ 31.) Throughout the last school year (2023-2024), Respondents illegally “covered” all
23 12 vacancies with unauthorized long-term substitutes (i.e., substitutes teaching beyond their 30- or
24 60-day authorization), “rolling” substitutes (i.e., rotating substitutes lined up sequentially so that
25 no single teacher is in the classroom for an entire year), and/or other teachers trying to cover
26 teacher-less classes on a day-to-day basis in addition to their own classes.

27 Petitioners Cleare, Romm, and Huerta submitted three *Williams* complaints on January 31,
28 2024, to address these teacher vacancies. Respondents replied on April 10, 2024. The District

1 conceded that the complaints were valid and that all of the identified unlawful vacancies exist.
2 (Petn. Ex. 8 at p. 3 [“The District acknowledges it is out of compliance[.]”].) But the District
3 offered no lawful remedy. Instead, the District said that it “has utilized long-term and day-to-day
4 substitutes” (which are clearly illegal) because the District was “unable to fill these vacancies with
5 permanent teachers.” (*Ibid.*)

6 Petitioners submitted an appeal to the WCCUSD Board of Education on April 18, 2024,
7 offering additional time to cure the District’s response. (Petn. Ex. 10.) WCCUSD responded by
8 confirming that it would not remedy the teaching vacancies. (Petn. Ex. 9.) The District’s human
9 resources representatives confirmed in a subsequent meeting that the District would continue to
10 use substitutes whose authorizations have expired to cover vacancies. (Petn. ¶ 49.) On July 17,
11 2024, Associate Superintendent of Human Resources, Camille Johnson, publicly confirmed that
12 the District once again plans for this upcoming academic year (2024-2025) to rely on substitutes to
13 fill teacher vacancies. (Provenza Decl. ¶ 11.) The District already appears to be relying on
14 substitutes and teacher assigned to other classrooms to cover vacancies throughout the District.
15 (Romm Decl. ¶ 6; Huerta Decl. ¶ 2, Provenza Decl. ¶ 12, Ex. E).

16 As described in accompanying declarations, the District’s failure to remedy these
17 complaints has significantly affected teachers and students at these schools. Petitioner Cleare
18 described how students were “crammed into combined classes” which “left students with little
19 space to learn or move around the classroom.” (Cleare Decl. ¶ 4.) She recounted that she spent
20 most of last year managing her own classroom as well as supporting a “seriously underprepared”
21 substitute across the hall with his own students, whose “yelling would often get so loud” that
22 Cleare would have to shut her classroom door to protect her own students. (*Id.* ¶ 5.) Petitioner
23 Romm described how teacher vacancies have required Helms Middle school to teach combined
24 classes in a cafeteria, and describes in particular the devastating effect that vacancies have on
25 English learners and newcomer students. (Romm Decl. ¶¶ 3-5.) Petitioner Huerta attested that
26 she had to “take on an additional class” to cover a vacancy at Kennedy High last year. (Huerta
27 Decl. ¶ 2.) Currently, Huerta is substituting another class on a day-to-day basis in addition to her
28 own classroom and because there is no permanent teacher assigned, there is “no curriculum for

1 [her] to follow” and she cannot even access the gradebook to give credit for students’ work.
2 (*Ibid.*).

3 **III. LEGAL STANDARD**

4 “[A] writ of mandate may be issued by any court to . . . compel the performance of an act
5 which the law specially enjoins, as a duty resulting from an office, trust, or station.” (Code Civ.
6 Proc. § 1085(a).) Further, “[t]he writ must be issued in all cases where there is not a plain,
7 speedy, and adequate remedy, in the ordinary course of law . . . upon the verified petition of the
8 party beneficially interested.” (Code Civ. Proc. § 1086.) Where a petition can be resolved on the
9 administrative record and law alone, additional fact development is not required. (Cf. *W. States*
10 *Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 575.)

11 **IV. ARGUMENT**

12 **A. WCCUSD Violated A Ministerial Duty To Respond To and Remedy**
13 **Complaints Under Section 35186.**

14 Section 35186 imposes ministerial duties on school districts in responding to *Williams*
15 complaints. A ministerial act is one that an agency is required to perform “without regard to [its]
16 judgment or opinion [on the] act’s propriety or impropriety.” (*HNHPC, Inc. v. Dept. of Cannabis*
17 *Control* (2023) 94 Cal.App.5th 60, 70.) Where a statute uses the word “shall” to describe the
18 performance of an act, it is presumed that the agency “do[es] not have discretion to disregard [it].”
19 (*Ibid.*; see also *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 443 [“It is a well-
20 settled principle of statutory construction that . . . ‘shall’ is ordinarily construed as mandatory.”].)
21 Here, the statute provides that the district “shall remedy” a valid complaint; “shall report to the
22 complainant” the resolution of that complaint; and “shall report summarized data” to the school
23 board. (Ed. Code § 35186(b), (e).) In this case, WCCUSD violated these ministerial duties. It
24 did not remedy—or even proffer a remedy for—indisputably valid facilities complaints, and it did
25 not remedy admittedly valid complaints regarding teacher vacancies.

26 **1. WCCUSD Failed to Fulfill Its Ministerial Duties to Remedy, Respond,**
27 **and Report the Stege Facilities Complaints.**

28 WCCUSD failed to fulfill its ministerial duties to remedy the *Stege* facilities complaints in
three separate ways.

1 *First*, WCCUSD failed to remedy the facilities issues identified in the *Stege* complaints
2 within 30 working days. Over a year has passed since Petitioners filed their complaints, and yet
3 the hazardous conditions at Stege remain unremedied. (Provenza Decl. ¶ 4.) The District’s press
4 release¹—four days after the filing of this lawsuit—announcing that it will “relocate the Stege
5 community” while it “rebuilds” the school (whatever that might mean), a year after the facilities
6 complaints were filed, does not negate the need for a writ. A mere statement that a party intends
7 to stop violating the law does not moot a lawsuit if there remains a reasonable possibility that the
8 alleged wrongful behavior could reoccur, especially where the issue is of broad public interest.
9 (See *Bullis Charter School v. Los Altos School Dist.* (2011) 200 Cal.App.4th 1022, 1033 [writ
10 petition against school district not mooted where “[the] issue [is of] broad public interest that is
11 likely to recur”].) Otherwise, WCCUSD and other districts could simply ignore *Williams*
12 complaints, put complainants through the expense and burden of bringing suit, and then moot the
13 suit by stating that it will comply after all.

14 As described in the Petition, the District has been debating a solution to the Stege facilities
15 crisis for *seven years*, including a plan to move the students to portable facilities. (Petn. ¶ 27, Ex.
16 4.) In 2016, the District identified Stege as one of the highest need schools for modernization,
17 behind two others. (Provenza Decl. ¶ 6, Ex. B at p. 5.) In 2021, however, after those two other
18 schools were rebuilt, the District deprioritized Stege again, placing two additional schools ahead
19 of it and reallocating funding. (*Id.* ¶ 6, Ex. C at pp. 2-3.) A writ should issue, if nothing else, to
20 ensure that this time the District invests the resources needed to make Stege Elementary habitable
21 and to hold the District accountable—after years of renegeing on its promises to fix Stege.

22 *Second*, WCCUSD failed to “report to the complainant[s] the resolution” of the facilities
23 complaints. (Ed. Code § 35186(b).) Even if the District, for good cause, was unable to *complete*
24 the remedy of the complaints at issue within the statutory time period, the reporting requirement
25 obligates the District to inform the complainant of a concrete remedial plan. That report must

26 _____
27 ¹ (WCCUSD, *July 23, 2024 Important Update: Temporary Closure of Stege Campus and*
28 *Relocation of Stege School Community* <<https://tinyurl.com/23d5mukz>> [as of Aug. 29, 2024].)

1 include enough specificity to allow complainants to evaluate the plan and, if necessary, pursue
2 administrative appeals or substantive writ review. (Ed. Code § 35186(c).) To this day, Petitioners
3 still do not know whether the Stege “rebuild” plan will meaningfully address any, much less all, of
4 their complaints. For facilities complaints in particular, the Legislature directed that an
5 unsatisfactory “proffered” resolution would be subject to escalation to the school board, and then
6 to the State superintendent, with review by the California Board of Education (see Ed. Code §
7 35186(c))—but none of that is possible unless the District actually communicates what the plan is
8 in sufficient detail to enable meaningful review.

9 *Third*, WCCUSD failed to fulfill its ministerial duty to report quarterly data on the
10 *Williams* complaints to the school board. (Ed. Code § 35186(e).) In its quarterly report to the
11 school board after receiving 45 *Williams* complaints, the District falsely reported that “0”
12 complaints were received during the relevant time period. (Petn. ¶ 30.) The reporting requirement
13 in section 35186 exists for good reason: it allows the public and county offices of education to stay
14 apprised of *Williams* violations occurring in schools and to hold the District accountable for
15 remedying any reported issues. By failing to adequately report the facilities complaints, the
16 District has skirted accountability and evaded necessary oversight.² Again, a writ should issue to
17 force compliance with the law and to hold the District accountable for blatantly ignoring its
18 statutory obligations.

19 **2. WCCUSD Failed to Fulfill Its Ministerial Duties to Remedy the**
20 **Teacher Vacancy Complaints.**

21 WCCUSD also failed to remedy the *Williams* complaints relating to teacher vacancies,
22 instead covering those vacancies with unauthorized substitutes in violation of its statutory duties.
23

24 _____
25 ² The District has shown a pattern of evading necessary oversight by failing to report complaints
26 received, and inaccurately reporting the conditions of the school in its Facility Inspection Tool
27 (FIT) evaluation to the State, another administrative requirement under *Williams*. For example, in
28 its August 2023 FIT evaluation, the District reported an exemplary ranking of 100% for the sewer
conditions at Stege. (Provenza Decl. ¶ 8, Ex. D at p. 1.) When in fact, as included in the June
2023 complaints, sewage spills out into the bathroom stalls when flushed. (Petn. Ex. 1.)

1 A teacher vacancy is not remedied unless the district fills the vacancy with someone who is
2 both (1) “certificated,” and (2) serves as the “single designated . . . employee” assigned for the
3 “entire year.” (Ed. Code § 35186(h)(3).) To be “certificated” means to hold the appropriate State-
4 authorized certificate demonstrating one has the minimal qualifications to teach the specific
5 subject matter(s) and students—*e.g.*, a full California teaching credential, an intern credential, a
6 one-year short-term teaching permit, or a one-year waiver. (See Ed. Code § 44830.) State
7 certification laws authorize substitutes (who have received less training and have fewer
8 qualifications than full-time teachers) to teach in any one classroom *only* for 30 or 60 days. (See
9 Cal. Code Regs., Tit. 5, §§ 80025; 80025.1(a)(4).)

10 The District has not lawfully filled a single vacancy identified by complainants at any of
11 the affected schools. Instead, the District has relied upon substitutes working beyond their
12 authorization and a rotation of day-to-day substitutes and teachers to fill vacancies. (Petn. ¶¶ 5,
13 34-35, Ex. 8.) This approach fails to “remedy” the vacancies for several reasons. First, assigning
14 a substitute or other teacher to cover a vacancy for less than an “entire year” fails, by definition, to
15 eliminate the teacher vacancy. (Ed. Code § 35186(h)(3).) The District’s practice of using rotating
16 day-to-day substitutes is therefore not a “remedy” at all, under the plain terms of the statute.

17 Second, a substitute who serves in any one classroom for longer than 30 or 60 days, even
18 for the entire year, is not “certificated” because they are working beyond their lawful
19 authorization. (See Cal. Code Regs., Tit. 5, §§ 80025; 80025.1(a)(4).) Substitutes holding an
20 “Emergency 30-day Substitute Teaching Permit” or a 60-day “Emergency Career Substitute
21 Teaching Permit” are to be utilized for *emergencies*, such as to temporarily fill an unexpected
22 absence. Individuals with substitute permits do not hold the proper certification to teach beyond
23 what their permit allows.

24 Reliance on substitutes also violates the command that districts employ “only persons who
25 possess the qualifications for those positions prescribed by law.” (Ed. Code § 44830(a).) In
26 California, teachers are expected to be fully prepared—*i.e.*, completed a teacher preparation
27 program, including the appropriate subject matter training, and hold either a preliminary or a clear
28 credential. (Petn. Ex. 12.) Substitute teachers, by contrast, do not need to possess those

1 qualifications. (Commission on Teacher Credentialing, *Emergency 30-Day Substitute Teaching*
2 *Permit (CL-505p)* (Dec. 2016), <[https://www.ctc.ca.gov/credentials/leaflets/30-Day-Substitute-](https://www.ctc.ca.gov/credentials/leaflets/30-Day-Substitute-Teaching-Permit-(CL-505p)>)
3 [Teaching-Permit-\(CL-505p\)>](https://www.ctc.ca.gov/credentials/leaflets/30-Day-Substitute-Teaching-Permit-(CL-505p)>) [as of Aug. 29, 2024] [requiring passage of basic skills
4 requirement, possession of a B.A. and fingerprinting requirement].) Indeed, it is because they
5 possess only the most minimal of qualifications that the Legislature limited their authorization to a
6 temporary emergency basis of 30 or 60-days for any one classroom. (See Cal. Code Regs., Tit. 5,
7 §§ 80025, 80025.1.)

8 At bottom, relying on “rolling” substitutes or teachers to cover vacancies on a day-to-day
9 basis undermines a central purpose of the *Williams* settlement—to provide the stability of
10 permanent, year-long teachers. Thus, the long-term use of substitutes and day-to-day covering of
11 vacancies is unlawful, and the District cannot rely on these practices to remedy the complaints.

12 **B. Section 35186’s Duties Are Not Discretionary, and Even If They Were,**
13 **WCCUSD’s Conduct Is Arbitrary and Capricious.**

14 **1. Compliance With Section 35186 Is Not Discretionary.**

15 WCCUSD may argue that it need not comply with Section 35186 because the statute is
16 discretionary, as it allows districts to decide (within limits) how to remedy complaints. Courts
17 have rejected similar arguments by other agencies seeking to evade analogous statutes. That some
18 portions of the statutory duty may involve discretion does not affect the courts’ ability to enforce
19 statutory requirements.

20 In *HNHPC*, for example, a statute required the Department of Cannabis Control to create a
21 database that “*shall* be designed to flag irregularities for the department to investigate.” (*HNHPC*,
22 *supra*, 94 Cal.App.5th at p. 69, italics added.) When Petitioner (a licensed cannabis operator),
23 sought a writ to enforce this statutory duty, the Department argued that the duty was discretionary
24 and not subject to a writ at all because designing such a database “requires creativity, strategy”
25 and attention to policy goals and industry trends, and therefore it “does not involve carrying out a
26 ministerial function.” (*Id.* at p. 70.) The court rejected this argument, holding the statute was
27 ministerial and that the agency had to comply with it. The court held that even if the Department
28 had creative control over designing the database, the statutory duty to build a compliant

1 database—however the Department chose to design it—was still “ministerial” because the
2 Department had “no discretion to disregard the express flagging mandate.” (*Ibid.*) The writ
3 issued.

4 *Doe v. Albany Unified School Dist.* (2010) 190 Cal.App.4th 668 (“*Albany Unified*”) is in
5 accord. There, the statute provided that school curricula “shall include instruction ... in ...
6 [p]hysical education, with emphasis upon the physical activities for the pupils that may be
7 conducive to health and vigor of body and mind, for a total period of time of not less than 200
8 minutes each 10 schooldays[.]” (*Id.* at p. 672.) The school district argued that the duty was
9 discretionary because the Legislature explicitly “encourage[d] local districts to develop programs
10 that will best fit the needs and interests of the pupils, pursuant to stated philosophy, goals, and
11 objectives.” (*Id.* at p. 675.) The court rejected that argument. Although the statute (like almost
12 any directive to a government agency) contemplated some degree of discretion, such as allowing
13 administrators to choose what activities “may be conducive to health and vigor of body and
14 mind,” the court held that it also established a clear, objective requirement for the minimum time
15 that must be devoted to those activities. (*Id.* at p. 673.) The writ issued to require a compliant
16 program, even if the district had discretion to decide the exact nature of the physical education
17 provided.

18 Likewise, in *Galzinski v. Somers* (2016) 2 Cal.App.5th 1164, the court granted a petition
19 for writ of mandate compelling a police department to comply with its published procedures on
20 handling citizen complaints of police misconduct. Petitioner alleged that the department had
21 failed to follow its own procedures in handling complaints, and instead had merely reviewed his
22 complaint and taken no further action. (*Ibid.*) The police department argued that Petitioner was
23 “improperly seeking to control the Internal Affairs Division’s discretion to decide what action to
24 take in response to his complaint.” (*Id.* at p. 1169.) The court rejected that view, holding that the
25 department had “a *ministerial* duty to conduct some sort of investigation” into the complaint, even
26 if that “procedure leaves it to the *discretion* of the department and its personnel to determine what
27 *kind* of investigation is reasonably necessary in each case.” (*Id.* at p. 1174, first italics added.)

28

1 Consistent with these cases, section 35186 creates ministerial duties for the school district
2 with respect to *Williams* complaints: to respond to the complaints and to remedy valid complaints.
3 That the Legislature did not (and could not have) specified exactly how each deficiency should be
4 cured does not mean the District is free to ignore the mandate of the Legislature.

5 C. **Alternatively, The District Violated Its Discretionary Duties with Respect to**
6 **Petitioners' Complaints.**

7 To the extent the Court construes the duty to remedy in section 35186 to be discretionary, a
8 writ should still issue for WCCUSD's abuse of discretion.

9 1. **The District Abused its Discretion Regarding the Teacher Vacancy**
10 **Complaints.**

11 (a) *The District's Use of Substitutes to Cover Vacancies Is Illegal.*

12 It is an *automatic* abuse of discretion for WCCUSD to take actions that are unlawful. (See
13 *Neighbors in Support of Appropriate Land Use v. Cnty. of Tuolumne* (2007) 157 Cal.App.4th 997,
14 1004 [an agency necessarily abuses its discretion where it takes actions that are not "consistent
15 with applicable law"].) As described *supra*, WCCUSD has violated multiple provisions of
16 California law by using substitutes working beyond their 30 or 60 day authorizations to cover
17 vacancies. (See Ed. Code § 44830(a); Cal. Code Regs., Tit. 5, §§ 80025; 80025.1(a)(4).) A writ
18 should issue correcting this abuse of discretion and compelling WCCUSD to cease this illegal
19 practice.

20 (b) *Failing to Invoke Readily Available Solutions to Fill Vacancies Is*
21 *Arbitrary and Capricious.*

22 The District's failure to pursue readily available solutions to fill the vacancies was
23 "arbitrary [and] capricious," and thus also an abuse of discretion. (*HNHPC, supra*, 94
24 Cal.App.5th at p. 72.) Courts have explained that "[w]hile a party may not invoke mandamus to
25 force a public entity to exercise discretionary powers in any particular manner, if the entity refuses
26 to act, mandate is available to compel the exercise of those discretionary powers in some way."
27 (*Id.* at p. 70; accord *Ellena v. Dept. of Ins.* (2014) 230 Cal.App.4th 198, 216–17 [writ was issued
28 "compelling the DOI to exercise its discretion to review the policy and decide whether to approve
or revoke it."].)

1 *Collins v. Thurmond* (2019) 41 Cal.App.5th 879, 917, for example, held that the
2 government abused its discretion in failing to take any action to monitor equal access issues and
3 prohibit discrimination as required by federal law. Recognizing that “how one engages in
4 monitoring for compliance with federal law . . . is discretionary in nature,” (*id.* at p. 918) the court
5 nevertheless held that the State abused its discretion because it had “failed to submit the data
6 required of [it] for the 2011-2012 school year,” and had “taken no action to procure that data and
7 [had] failed to implement any program or process for ensuring that the data is accurately
8 submitted.” (*Ibid.*)

9 *California Hosp. Assn. v. Maxwell-Jolly* (2010) 188 Cal.App.4th 559 is also instructive.
10 There, the court held a writ should issue because the State abused its discretion by adopting a
11 procedure for Medicaid reimbursements without considering certain statutory factors. (*Id.* at pp.
12 571-72.) The statute required the State to adopt unspecified “methods and procedures” in order
13 “to assure that payments are consistent with efficiency, economy, and quality of care” (*Id.* at
14 p. 565.) A writ may issue, the court held, even where the statute affords such “broad discretion,”
15 (*id.* at p. 570) and in that case a writ was warranted because the State acted based on “purely
16 budgetary” concerns and did not actually balance the statutory factors. (*Id.* at p. 577.)

17 WCCUSD similarly abused its discretion by unreasonably failing to adopt *any* of the
18 lawful legislative options to fill vacancies. The Education Code spells out numerous lawful ways
19 to remedy a teacher vacancy, particularly in the face of a teacher shortage. (Petn. ¶¶ 41-46.) For
20 example, the District could hire teachers out of retirement. (*Id.* ¶ 41.) It could reassign teachers
21 from administrative or district offices. (*Id.* ¶ 42.) It could assign teachers to a classroom who are
22 currently serving in a special assignment elsewhere. (*Id.* ¶ 43.) It could obtain authorization to
23 employ intern teachers. (*Id.* ¶ 44.) It could obtain emergency-style year-long permits for
24 candidates with minimum qualifications. (*Id.* ¶ 45.) Or, as a last resort, it could obtain waivers
25 from the State—even for the substitutes they are currently employing—to ensure that those
26 substitutes are actually qualified and worthy of assignment to a classroom for the year. (*Id.* ¶ 46.)

27 The District engaged in *none* of these options. To be sure, the District claimed that it tried
28 to hire fully prepared teachers through normal “recruitment and development measures,” including

1 attending job fairs and posting on job boards. (Petn. Ex. 8 at pp. 4, 9, 15.) But when those efforts
2 failed, WCCUSD was statutorily obligated to invoke one of the many other options that the
3 Legislature has contemplated for use *precisely* when standard hiring efforts alone are not effective
4 at filling teacher vacancies. Given the availability of these solutions, it is manifestly unreasonable
5 for the District to disregard every single one of them and simply blame their non-compliance on a
6 teacher shortage.

7 **2. The District Abused its Discretion Regarding the Facilities Complaints.**

8 To the extent the Court considers Respondents’ duty to remedy urgent facility conditions
9 discretionary, WCCUSD’s delayed, incomplete measures (i.e., adopting the long-term plan or
10 closing the school for the upcoming school year) were an abuse of discretion too. It is arbitrary
11 and capricious to displace elementary school students by transferring them to a middle school
12 already filled with students, when the District had opportunities to remedy many of the dangerous
13 facilities complaints that raised health and safety concerns months earlier without uprooting these
14 students. The District has provided no explanation, and indeed no response, as to why it could not
15 physically repair the facilities at Stege when the complaints were raised. The failure to offer a
16 rationale for this decision confirms the decision to be arbitrary and capricious.

17 **D. All Other Writ Requirements Are Satisfied.**

18 Petitioners satisfy all other requirements for a writ to issue. Petitioners lack “a plain,
19 speedy, and adequate remedy” at law. There is no legal action available to Petitioners; a writ is
20 their only avenue for relief. (*CV Amalgamated LLC v. City of Chula Vista* (2022) 82 Cal.App.5th
21 265, 286-87 [writ available where “mandate is the only remedy”].) Petitioners also exhausted all
22 available administrative remedies. (See *Albany Unified*, 190 Cal.App.4th at p. 685.) Petitioners
23 also have standing and a beneficial interest, at a minimum, under the “public interest standing”
24 doctrine. *Save the Plastic Bag Coal. v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166.

25 **V. CONCLUSION**

26 Petitioners respectfully request that the Court issue a writ of mandate compelling
27 Respondents to remedy Petitioners’ facilities complaints and report that remedy to Petitioners, and
28 to remedy the teacher vacancies. (See Proposed Order.)

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Respectfully submitted,

By: s/ Karissa A.D. Provenza
 Karissa A.D. Provenza

PUBLIC ADVOCATES INC.
John T. Affeldt
Nicole Gon Ochi
Karissa A.D. Provenza

By: s/ Dane P. Shikman
 Dane P. Shikman

MUNGER TOLLES & OLSON LLP
Rohit K. Singla
Dane P. Shikman
Kyra E. Schoonover
Laura R. Perry

Counsel for Petitioners