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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

**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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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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

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

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

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

1 though such assignments are illegal under the Education Code. It is black letter law that a public
2 official has a mandatory duty to take some action to execute a statutory obligation, even when that
3 statute confers discretion in execution. (E.g., *Galzinski v. Somers* (2016) 2 Cal.App.5th 1164,
4 1174.) The principal problem with the District’s approach to covering vacancies is that it
5 continues to rely illegally on substitute teachers who are not authorized to teach in these
6 classrooms for the entire year. That approach is not, by definition, a “remedy” under section
7 35186, and is independently unlawful. Moreover, while the District claims it has taken every
8 available step to address the vacancies at issue, sworn testimony from the District’s
9 Superintendent of Human Resources demonstrates the opposite: the District has not invoked the
10 legislatively prescribed procedures for lawfully filling vacancies, thereby “failing to act” in
11 violation of its mandatory duties.

12 In the twenty years since Public Advocates settled *Williams* and helped draft section
13 35186, we have never seen a school district so dismissive of its obligations to remedy and respond
14 to valid *Williams* complaints. Petitioners request that the Court issue a writ of mandate to compel
15 the District to fulfill the requirements of section 35186.

16 **II. ARGUMENT**

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

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

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

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

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

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

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

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

1 As these admissions demonstrate, at any time, the District could withdraw the RFP, modify
2 it, or extend the timeframe for completion. Were it otherwise, any writ could be defeated by a
3 government entity announcing, after being sued, that it intended to remedy its legal violations. The
4 risk of the District abandoning or deprioritizing the repair of Stege in the coming years is not
5 theoretical, because the District did exactly that in 2021. Stege was ranked as the third priority
6 site in the 2016 Long Range Facilities Master Plan. But nothing was done, and Stege students
7 were required to attend school every day for years in deplorable conditions.² In other words, in
8 2021, five years after Stege was ranked as third in priority, the District moved Stege down the
9 priority list and allocated bond funding towards certain high schools, despite Stege being next in
10 line for its modernization. After years of delay and shifting priorities from the District, Petitioners
11 now require assurance from this Court that the District will address the facilities concerns at Stege.

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

19 **3. Even If Petitioners’ Claims Relating to Stege Facilities Were Moot, a**
20 **Writ Should Nevertheless Issue**

21 Mootness is not a bar to relief in California. The Court has the “inherent discretion” to
22 consider the merits of an issue it deems moot. (*Konig v. Fair Emp. & Housing Com.* (2002) 28
23

24 ² Former WCCUSD spokesperson Liz Sanders acknowledged last year that despite Stege being a
25 high priority since 2016, its repair was deprioritized in favor of other schools. (Nixon, ‘*I feel like*
26 *you guys don’t care about our school*’: Stege students, staff ask WCCUSD to fix 80-year-old
27 *building* (Jan. 18, 2023) Richmond Confidential <<https://tinyurl.com/zwjrmj6v>> [as of Oct. 4,
28 2024].)

27 ³ Because Petitioners’ facilities claim is not moot, neither are Petitioners’ related claims that the
28 District failed to adhere to procedural reporting requirements.

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

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

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

13 The District claims that it has no enforceable duty to address complaints regarding teacher
14 vacancies because section 35186 does not specify the particular manner in which the District must
15 fill those vacancies. (Opp. at pp. 18, 19.) That is wrong. It is long settled that courts may issue a
16 writ to compel officials to act “in some way” to discharge statutory duties that confer discretion as
17 to implementation, even if the court cannot compel the exercise of discretion in a “*particular*
18 *manner.*” (E.g., *Ellena v. Dept. of Ins.* (2014) 230 Cal.App.4th 198, 205.) Put another way, where
19 a statute imposes a duty that involves discretion in implementation, there is nonetheless a
20 ministerial duty to take some action, and a failure to act is enforceable by writ. (E.g., *Galzinski,*
21 *supra*, 2 Cal.App.5th at p. 1174 [“[W]hile the department and its personnel have a *ministerial duty*
22 to conduct some sort of investigation into every citizen’s complaint, the procedure leaves it to the
23 *discretion* of the department and its personnel to determine what kind of investigation is
24 reasonably necessary in each case.” Italics revised].) It is equally well settled that courts may
25 issue a writ when public officials have acted in a way that abuses the discretion conferred by the
26 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].)

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

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

9 **2. The District’s Use of Unauthorized Substitute Teachers Is a**
10 **Straightforward Violation of Law**

11 The District’s use of substitute teachers, without seeking the appropriate year-long permits
12 or waivers for those substitutes, violates section 35186, which requires permanent personnel be a
13 “single designated” person and be properly certificated. (Ed Code § 35186(i)(3); see also Petn. ¶¶
14 38, 59; Ed. Code § 44830.)

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

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

1 Resources admitted that “the [D]istrict is utilizing substitutes beyond their 30-day periods,”
2 because “[w]e don’t have a choice.” (Supp. Provenza Decl., Ex. 8 (Johnson Dep.) at p. 40:18–
3 21.) Yet she conceded that this practice violates the law. (*Id.* at p. 37:3–5 [acknowledging that
4 30-day substitute is teaching “beyond their lawful authorization”].) That is consistent with the
5 District’s position in response to the *Williams* complaints. (Petn. Ex. 8 at p. 3 [“The District
6 acknowledges it is out of compliance[.]”].)

7 The District also ignores Petitioners’ argument that it is a *de facto* abuse of discretion to
8 implement a remedy in a way that conflicts with the law—such as using substitutes beyond their
9 30- or 60-day authorizations. (Mot. at pp. 16, 19.) That alone is dispositive here.

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

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

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

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

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

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

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

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

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

3 **4. The District’s Proposed “Impossibility” Exception Is Meritless**

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

14 **III. CONCLUSION**

15 Petitioners respectfully request that this Court grant Petitioners’ Motion.

16 DATED: October 4, 2024

Respectfully submitted,

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