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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
FOR NEW TRIAL (CCP § 657, 659)**

Judge: Hon. Benjamin T. Reyes, II
Dept.: 16
Date: March 19, 2025
Time: 8:30 a.m.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Petitioners bring this motion because the District invited legal error through
4 misrepresentations about its ability to comply with the law, on which the Court understandably
5 relied. Now that Petitioners have exposed those misrepresentations, the District effectively
6 concedes that its prior statements were not correct, yet asks the Court to essentially ignore the
7 legal error and permit the District to enjoy the fruits of its deception.

8 The District had persuaded the Court at the hearing, for example, that it could not
9 involuntarily transfer teachers because that was prohibited by its contract with the teachers’ union.
10 But now, the District acknowledges that it *can* involuntarily transfer teachers, and such transfers
11 are not prohibited by that agreement. The District had also persuaded the Court that it need not
12 seek State waivers to use uncertified teachers. But now, the District seems to concede *sub silentio*
13 that the declaration Petitioners have submitted from the head of California’s Commission on
14 Teacher Credentialing (“CTC”) is correct: The District is legally required to seek waivers from
15 state agencies—including a waiver of the variable-term waiver procedures themselves—if the
16 District contends it cannot comply with the Legislature’s mandates regarding certificated teachers.
17 As such, contrary to the District’s prior protestations, waivers are not “impossible.” Rather,
18 Respondents have avoided seeking them to cure the vacancies at issue here out of a fear that the
19 CTC will impose more rigorous teacher standards on the District than it has on itself to date.

20 The District tries to distract from these issues with procedural arguments about
21 Petitioner’s reliance on newly discovered evidence. But the primary basis on which Petitioners
22 seek a new trial is not that they discovered new facts warranting a different result, but that a
23 fundamental error of law occurred, invited by the District’s misrepresentations which were
24 erroneous at the time and only have further been shown to be erroneous now. The District does
25 not seriously engage with Petitioners’ arguments on that score. It simply re-asserts that
26 compliance with the law is impossible. But if compliance with state certification laws and the
27 *Williams* requirement for a single, designated year-long teacher really were impossible, then it is
28 for the state agencies, which possess the requisite technical expertise, to decide in the first

1 instance, rather than the District or the Court.

2 There is no dispute that the District continues to staff classrooms with uncertified,
3 and thus illegally placed, teachers. That is because the District induced the Court to rely on
4 incorrect statements of law and fact, some of which were made for the first time at the hearing or
5 hours beforehand. Students, parents, and teachers are entitled to have the Court’s legal error
6 corrected. Respondents should not be allowed to profit from their misrepresentations. Petitioners
7 therefore respectfully request that the Court grant its motion for a new trial and grant Petitioners’
8 writ prohibiting the District from assigning uncertified individuals to certificated positions;
9 directing the District to fill vacancies with only year-long, certificated teachers; and ordering the
10 District to follow the statutory process for seeking waivers from proper state agencies if it has
11 exhausted all other options.

12 **II. ARGUMENT**

13 **A. The Court Should Correct Its Error and Grant the Motion for New Trial**

14 Respondents devote less than one page to counter the core basis under which
15 Petitioners seek a new trial, that the “decision is against law.” (Code Civ. Proc. § 657(6); *see also*
16 *id.* § 657(7) [permitting new trial for “error in law”].) Because the District admits it continues to
17 violate state law, its only argument against a new trial on this ground is that it is impossible for the
18 District to comply with the law. But the District’s impossibility argument is undercut by the
19 testimony of CTC Director Dr. Sandy and United Teachers of Richmond (“UTR”) Executive
20 Director Mr. Mitchell, both of whom explain that the District has numerous viable options that it
21 can use—and has previously used—to fill the remaining vacancies, including involuntary transfers
22 and waivers. Indeed, the District now concedes that it does have the authority to involuntarily
23 transfer teachers but asks the Court to nonetheless reaffirm the prior decision that was erroneously
24 based on the District’s prior misrepresentations that the union MOU prohibited it from doing so.

25 The Court also erred by not requiring the District to present its impossibility
26 arguments in the first instance to the appropriate state agencies through the waiver process. Those
27 agencies are the proper authority to determine whether the District should be relieved from its
28 mandatory duties under state certification laws. The *unrebutted* declaration Petitioners have

1 provided from CTC Executive Director Sandy explains that—contrary to the District’s last-minute
2 statements at the hearing and the night beforehand—the District has an obligation to seek waivers
3 if it believes itself unable to comply with state law. (Sandy Decl. ¶ 13.) That is so even if a
4 candidate does not possess the standard variable-term waiver requirements (like educator
5 preparation program enrollment) as the Commission’s waiver authority is broad and the District’s
6 duty to assign only lawfully approved teachers is mandatory. (*Ibid.*) Moreover, the District’s
7 Opposition does not even mention, much less contest, the fact that, if compliance with the
8 *Williams* requirement for year-long certified teachers were indeed impossible, it would have to test
9 that assertion before the State Board of Education through a waiver process. As Dr. Sandy
10 concludes and as applies equally to *Williams* requirements and the State Board: “When a district,
11 such as WCCUSD in this instance, refuses to test its hardship conclusions before the Commission
12 by seeking a waiver through the required processes, the Commission’s authority and expertise in
13 upholding minimum teacher quality standards are evaded and usurped.” (*Id.* ¶ 15.)

14 Finally, the District does not meaningfully dispute that a new trial should be
15 granted based on newly discovered evidence. (Code Civ. Proc. § 657(4).) The District’s ancillary
16 procedural arguments on this front are both irrelevant and wrong. Petitioners produced additional
17 evidence only to correct misstatements of law and fact by the District.

18 **1. Respondents Cannot Dispute That A New Trial Should Be Granted**
19 **Based on Legal Error**

20 Respondents fail to meaningfully respond to Petitioners’ argument that the Court’s
21 decision was “against law” or an “error in law”—the primary ground upon which Petitioners seek
22 a new trial—and admit that they failed to comply with their mandatory obligations under *Williams*
23 and state certification laws. (Code Civ. Proc. § 657(7); 657(6).) Because Respondents cannot
24 rebuff Petitioners’ argument that an error of law was made, they instead rely on *Renfer v. Skaggs*
25 (1950) 96 Cal. App. 2d 380, 384, to argue that there must be an error of *fact* for a new trial to be
26 granted on the ground that the decision is “against law.” (Opn., at p. 18.)

27 Though Respondents also occasioned errors in factual conclusions, this assertion is
28 wrong. The California Supreme Court in *Carney v. Simmonds* (1957) 49 Cal.2d 84—decided

1 seven years after *Renfer*—held that “issues of law may be re-examined on a motion for new trial”
2 and that there may be “a situation proper for a new trial motion where only issues of law are
3 determined.” (*Id.* at p. 90.) After *Carney*, California courts have made clear that “there is no less
4 reason why the trial court should have a second chance to re-examine its judgment where issues of
5 fact are involved than where issues of law or law and fact are decided.” (*In re Marriage of*
6 *Beilock* (1978) 81 Cal.App.3d 713, 720.) The District cannot seriously dispute that a legal error
7 was committed, which resulted in part from its erroneous and misleading statements to the Court.

8 *First*, the District admits that it failed to comply with its mandatory legal duty to
9 reassign credentialed teachers to fill vacancies under the reassignment authority it has pursuant to
10 Education Code § 35035(e) and identifies five vacancies that still remain at Helms Middle, Stege
11 Elementary and Kennedy High School.¹ The District argued to the Court, however, that its
12 violation of the law should be excused because compliance was impossible. The Court accepted
13 this premise, relying on the District’s representation that the union MOU prohibited it from using
14 involuntary transfers. But, as explained by Mark Mitchell, “[b]oth voluntary and involuntary
15 transfers are permitted under [the] union contract.” (Mitchell Decl. ¶ 6.) Now, even the District
16 admits that its previous statements to the Court regarding transfers were false. The District
17 submits a declaration from Dr. Camille Johnson admitting that, right after it told this Court that
18 involuntary transfer were prohibited by the MOU, it “decided to invoke [the MOU] for
19 involuntary transfers to fill vacancies in teaching positions.” (Declaration of Camille Johnson
20 (Johnson Decl.) ¶ 11.)

21 The District tries to explain away this inconsistency with hand-waiving. Dr.
22 Johnson claims that “[a]t the time I submitted my declaration in support of the District’s
23 Opposition to the Petition for Writ of Mandate, it was my understanding that it was UTR’s
24 position that the District did not have the power to involuntarily transfer credentialed teachers to

25
26 ¹ Dr. Johnson’s declaration admits the existence of three ongoing vacancies at Helms (Johnson
27 Dec ¶ 8); she additionally identifies a vacancy unlawfully filled by a substitute in an APP class at
28 Kennedy High School and another vacancy in a fifth grade class at Stege. (Johnson Dec ¶ 6.)
The latter constitutes a vacancy under *Williams* because the position will not be filled by a “single,
designated” teacher this year but split between two retired teachers. (*Ibid.*).

1 different school sites to fill vacancies without their consent, except for low enrollment, new
2 schools, and discipline.” (Johnson Decl. ¶ 11.) But the *union’s position* about what the MOU
3 allows does not control the District, much less determine what the MOU legally permits. The
4 District cannot claim that it generally defers to the union’s interpretation of the MOU, regardless
5 of its own view of the contract. Exhibit 5 to Dr. Johnson’s declaration fully lays out the District’s
6 legal analysis for its broad involuntary transfer authority.² (Johnson Decl., Ex. 5.) The Court
7 should revisit its decision now that it is settled that the District *can*, in fact, involuntarily transfer
8 certified teachers to fill the vacancies at issue in this Petition and that its prior reliance on the
9 District’s statements to the contrary was a legally erroneous interpretation of the MOU.

10 In addition to involuntary transfers of teachers serving in non-instructional
11 positions – of which there are dozens available,³ the District can transfer into vacant teaching
12 positions administrators with teaching credentials from among the dozens that it employs. The
13 District concedes that such involuntary transfers are possible when done according to proper
14 procedures, (Johnson Decl. ¶ 21), but claims that this is “not workable.” (Johnson Decl. ¶ 19.)
15 But the Legislature mandates that classroom instructional positions be filled first by certificated
16 staff for the entire school year *before* district office positions (other than Superintendent). (Ed.
17 Code §§ 35186(h)(3); 44830(a).) It is not for Dr. Johnson, the District, or even this Court, to
18 determine what roles are essential. That decision was made by the California Legislature, and the
19 District has a mandatory duty to utilize voluntary and involuntary transfers to fill teacher
20 vacancies before it can pursue lesser qualified teachers or waivers. (Ed. Code § 44225.7.) To the
21 extent the District has concerns about disruptions to its operations from such reassignments, it is

23 ² Moreover, as was laid out in Petitioners’ Reply on their motion to issue the writ (Reply at p. 12),
24 in August 2024, Dr. Johnson sent letters to multiple teachers informing them of their involuntary
25 transfers. In these letters, she cited the MOU granting her authority for such transfers. (Supp.
Provenza Decl. ISO Mot. to Issue Writ (filed Oct. 4, 2024), Ex. 3.)

26 ³ In December 2024, the District identified 40 fully credentialed teachers for reassignment to cover
27 vacancies. Ultimately, it decided to reduce the transfer number to 19 teachers. At a minimum, the
28 other 21 are available now to fill the five vacant positions directly flowing from Petitioners
complaints.

1 free to raise those with the appropriate state agencies in seeking a waiver of pertinent Education
2 Code requirements.

3 *Second*, the District fails to rebut that it could have and should have utilized waiver
4 options to address the vacancies at issue. To be clear, such vacancies are an academic issue here
5 given the dozens of fully credentialed teachers and administrators the District has available to fill
6 the five vacancies at issue. Waivers may only be pursued after verifying *no* fully credentialed
7 teachers are available for assignment. (See Ed. Code § 44225.7(a); see also Supp. Provenza Decl.
8 ISO Mot. to Issue Writ (filed Oct. 4, 2024), Ex. 1, Waiver Requests Guidebook, at p. 2.)

9 Even so, the District admits that it did not seek waivers for any of the current,
10 uncertificated personnel illegally filling the vacancies at Helms or Stege or Kennedy. The
11 District’s only justification is that seeking waivers would be futile because the illegally placed
12 substitutes did not wish to enroll in a teacher preparation program necessary for a waiver or
13 otherwise qualify for waivers. (Johnson Decl. ¶ 10.) This argument was made for the first time in
14 a supplemental filing the night before the hearing on the writ petition. To address why that
15 belated argument was wrong, the Executive Director of the CTC has now explained: “The
16 legislature established broad waiver authority for the Commission in order to allow some measure
17 of flexibility in the application of state certification laws for individual districts” and “generally,
18 can provide ‘temporary exemptions when deemed appropriate by the commission.’ California
19 Education Code section 44225, subdivision m.)” (Sandy Decl. ¶ 11). In its opposition here, the
20 District offers no response to Dr. Sandy’s explanation of the CTC’s legal waiver authority. As a
21 matter of law, the Commission’s waiver authority includes the ability to waive certification
22 provisions “relied on for a standard variable-term waiver such as the requirement that a candidate
23 enroll in a teacher preparation program” and the District is *required* to seek such waivers from the
24 Commission if it has exhausted all other options. (Sandy Decl. ¶ 13.) The District has neither
25 exhausted all other options nor sought a waiver from the CTC.

26 There is no dispute of fact here: The District admits that vacancies from
27 Petitioners’ writ petition remain and the District has the ability to use involuntary transfers to fill
28 these vacancies and to seek waivers from state agencies, but has failed to do so. Its arguments for

1 impossibility were based on legal misrepresentations regarding the union MOU and the waiver
2 process. The Court must correct this error of law.

3 **2. The Court Must Allow State Agencies to Address Respondents’**
4 **Impossibility Arguments in the First Instance**

5 The District’s opposition contains no argument regarding Dr. Sandy’s testimony
6 that the Court must allow state agencies to make the first judgment on whether the District should
7 be relieved from its mandatory duties under state certification laws. The District’s “impossibility”
8 determination must be tested by expert agencies who possess the requisite technical expertise.
9 (*Communities for a Better Env’t v. State Water Res. Control Bd.* (2003) 109 Cal.App.4th 1089, pp.
10 1103–1104.) The District’s duty to comply with the legislative mandate to fill vacancies with
11 year-long certificated teachers under sections 35186 and 44830 is mandatory. There is no good-
12 faith exception or intent requirement for the Court to interpret within the statute. Therefore,
13 “relief from state mandates *must* come from the legislature and not from the courts.” (*Board of*
14 *Supervisors v. McMahon* (1990) 219 Cal.App.3d 286, 300–301, reh’g denied and opinion modified
15 (Apr. 30, 1990), [emphasis added].)

16 Respondents’ reliance on *Sutro Heights Land Co. v. Merced Irrigation Dist.* (1931)
17 211 Cal. 670, 704-705, for its “impossibility” argument is misplaced. There, the Court found it
18 was impossible for an irrigation district to comply with a state statute requiring drainage efforts
19 after determining that it lacked the ability to pay. In doing so, the Court reasoned that the
20 legislature did not intend the duty to apply where financial inability were at issue. (*Sutro Heights*,
21 *supra*, 211 Cal. at 703.) *Sutro Heights* is distinguishable on multiple grounds. First, unlike in
22 *Sutro Heights*, here it is clear that the Legislature *did* intend to compel districts to comply with
23 *Williams* and state certification laws even when it might be difficult to comply; it created no good-
24 faith exceptions for districts to unilaterally determine that they are unable to comply. Instead, the
25 Legislature set forth a statutory scheme such that state agencies and their staff, who possess the
26 technical expertise, knowledge, and resources, are responsible for determining a District’s
27 hardship assertions and whether a waiver is warranted in the first instance. (Sandy Decl. ¶ 15.)

28 Further, in contrast to the record in *Sutro Heights*, here, “the record before [the

1 Court] does not demonstrate impossibility.” (*McMahon, supra*, 219 Cal.App. at p. 300.) Rather,
2 the record here more closely mirrors *Board of Supervisors v. McMahon*, in which the court held
3 that the County’s testimony “demonstrates no *literal* impossibility of County funding for the []
4 program at the heart of the dispute.” (*Ibid.*) The same is true here. There is no *literal*
5 impossibility that the District cannot comply with *Williams* when the evidence shows that dozens
6 of fully-credentialed teachers are available to transfer and, after that, the District still has the
7 option to seek a waiver from the CTC and/or a *Williams* waiver from the State Board. As the
8 Court explained in *McMahon*—nearly 60 years after *Sutro Heights*—if “the legislature is acting
9 within its power” then “the question of the wisdom of the action is, of course, not one for the
10 courts to determine.” (*Ibid.*) The California legislature acted within its power in mandating that
11 the District provide year-long certificated teachers under *Williams*. The District admits it has not
12 complied with that mandate. The Court must defer to the legislature and administrative agencies
13 in determining whether the District should be relieved of this mandatory duty.

14 **3. Respondents Do Not Dispute The New Evidence Petitioners Set Forth**
15 **to Correct Their Misstatements**

16 The District does not challenge the veracity of the Petitioners’ corrective
17 declarations. In fact, Dr. Johnson’s declaration confirms Mr. Mitchell’s testimony that—contrary
18 to the District’s previous statements to the Court—the MOU does not prohibit involuntary
19 transfers and that the District does regularly use involuntary transfers to fill vacancies.

20 Respondents instead focus on a procedural escape hatch. They argue that
21 Petitioners failed to prove that such new evidence could not have been discovered with
22 “reasonable diligence.” As an initial matter, for an error of law, there is no requirement for
23 “reasonable diligence,” and the Court also retains the power to revisit prior erroneous orders
24 before judgment is entered. (*See Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1096.) Moreover,
25 Petitioners were reasonably diligent—particularly as to those portions of the declarations that
26 address new issues of fact (as opposed to issues of law). Petitioners supplied the new evidence to
27 correct the District’s misstatements to the Court in the District’s last-minute submission and at
28 oral argument and made the Court aware of new post-trial District actions in direct contradictions

1 of its trial assertions—Petitioners did not have an opportunity to obtain these additional corrective
2 declarations before the Court ruled.

3 Moreover, California courts have granted motions for new trial based on newly
4 discovered evidence that was used to correct the record when a party concealed or misrepresented
5 the record. For example, in *Sherman v. Kinetic Concepts, Inc.* (1998) 67 Cal.App.4th 1152, 1162,
6 the court of appeal reversed the district court’s decision denying a motion for new trial on the
7 ground of newly discovered evidence when the opposing party’s “concealment of the subject
8 documents deprived the Shermans of the chance to tell the jury the whole story.” Similarly, in
9 *People v. Williams* (1962) 57 Cal.2d 263, 275, the court of appeals found it was an abuse of
10 discretion for the trial court not to have granted the defendant’s motion for new trial after newly
11 submitted affidavits “disclose[d] a deliberate scheme to produce false evidence.” As in *Kinetic*
12 *Concepts* and *Williams*, here the new evidence was directly responsive to Respondents’
13 misstatements during the hearing that formed the basis of the Court’s erroneous decision. (*See,*
14 *e.g.*, Provenza Decl. Ex. A at p. p. 31:5–12 [the Court accepting the District’s false representation
15 that the MOU precluded involuntary transfers].) The declarations were produced to respond to
16 misstatements at the hearing, and Petitioners diligently produced this evidence *after* the
17 misstatements. The only manner by which to do so was through a motion for new trial.

18 For the same reasons, the evidence in the declarations is not cumulative. The
19 declarations clarify statements from the hearing that the Court relied on to reach its decision and
20 illustrate that it is possible for the District to comply with its mandatory duty. (*See Sherman,*
21 *supra*, 67 Cal.App.4th at 1162 [finding evidence was not “merely cumulative” because the
22 evidence went “to the very essence of all of the Shermans’ claims”].)

23 **B. Petitioners Are Entitled to An Expedited Hearing Under The Law**

24 Petitioners are glad to have this motion decided by Judge Mockler if that is
25 workable, but under Code Civ. Proc. § 660(b), Petitioners have a right to expedited consideration
26 of their motion for a new trial. Petitioners filed this motion on December 23, 2024. The original
27 hearing was scheduled for February 26, 2025, two months after the motion was filed and one year
28 following the initial complaint. Petitioners assumed the motion would be heard by Judge

1 Mockler, but the case was reassigned.

2 Petitioners are particularly concerned about further delay because of the nature of
3 the relief in this case—hundreds of students in West Contra Costa Unified School District
4 continue to be denied the educational opportunities they are entitled to under California law,
5 having gone over a year without a permanent, certificated teacher.

6 If Petitioners are to be reassigned again to Judge Mockler, Petitioners request it be
7 for hearing on an expedited basis, as required by law. The hearing itself already has been further
8 delayed due to the District’s failure to respond to Petitioners’ motion in a timely manner, despite
9 repeated efforts by Petitioners to ensure that the District received proper notice. (See Statement
10 Regarding Absence of Opposition to Petitioners’ Motion for New Trial.)

11 **C. Respondents Still Fail to Follow Mandatory Williams Complaint Procedures**
12 **and Should be Ordered to Do So.**

13 In December, Petitioners presented three *Williams* complaints regarding Highland
14 Elementary School, believing at that time that the District had neglected to respond to the
15 complaints within the designated timeline. The District’s Opposition demonstrates it did respond
16 to two of the three *Williams* complaints reported in their *Williams* quarterly report. However, the
17 District has apparently not responded to the third complainant included in the quarterly report.
18 (Supp. Decl. of K. Provenza ¶¶ 2-4.) Worse still, a fourth *Williams* complaint was submitted to
19 the District on September 13, 2024, which was conspicuously absent from the quarterly report and
20 which the complainant reports still has not been responded to. (*Id.* ¶¶ 3-4.) This new evidence not
21 only supports Petitioners’ motion for new trial based on error in law, but also underscores the
22 District’s continued disregard for the *Williams* process.

23 **III. CONCLUSION**

24 Petitioners respectfully request that this Court correct its error and grant
25 Petitioners’ Motion for New Trial and grant Petitioners’ Writ of Mandate as set forth in the
26 accompanying proposed order.
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DATED: March 14, 2025

Respectfully submitted,

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