

Case No. A173289

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA**

**FIRST APPELLATE DISTRICT
DIVISION TWO**

**SAM CLEARE, SARAH KINCAID, JEREMIAH ROMM, AND
HILDA CRISTINA HUERTA**

Appellants and Petitioners

vs.

**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**

Appellees and Respondents

**On Appeal From the Superior Court for the State of California,
County of Contra Costa, Case No. N24-1353
Hon. Benjamin T. Reyes II
Hon. Terri Mockler**

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

In accordance with California Rules of Court, rule 8.208, Appellants and Petitioners Sam Cleare, Sarah Kincaid, Jeremiah Romm, and Hilda Cristina Huerta hereby respectfully submit their Certificate of Interested Entities or Persons.

Appellants and Petitioners know of no entity or person that must be listed under rule 8.208, subd. (e)(1) or subd. (e)(2).

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I. INTRODUCTION

This appeal presents a startling situation: a government agency, Respondent West Contra Costa Unified School District (the “District”), freely admitting to having denied schoolchildren in at least five classrooms their right to a legally qualified teacher *for over two years*. Respondents acknowledge, as well, that they are failing to remedy vacancies elsewhere in the district and that they have a practice of filling vacancies with unlawful, uncertified 30-day substitutes serving beyond their authorization period for the entire year. The lower court’s only rationale for refusing to force the District to comply with the teacher qualification laws—and the only basis on which the District defends that decision—is that it is “impossible” for the District to comply with the Legislature’s command due to the ongoing teacher shortage, a teacher shortage that has existed for decades and that has not prevented other school districts from complying with the law. Respondents’ Opposition doubles down on this singular “impossibility” defense.

Respondents’ impossibility defense does not exist as a matter of law or fact. As a matter of law, there is nothing in the purpose or text of the *Williams* or teacher certification statutory

frameworks to suggest that school districts—either unilaterally or with the blessing of a court—may ignore state-mandated teacher quality minimum standards. In fact, the District concedes that the California Supreme Court reaffirmed just a few years ago that the courts cannot “excuse noncompliance with a statute” unless “the excusal constitutes an interpretation of the statute in accordance with the Legislature’s intent.” (Resp. Br. at pp. 49–50, quoting *Nat. Shooting Sports Found., Inc. v. State* (2018) 5 Cal.5th 428, 433, 436 (“*NSSF*”).) Neither the District nor the lower court has suggested that the Legislature intended courts to excuse school districts from complying with the laws at issue here, nor would that make any sense given the complex regime the Legislature has established to regulate teacher qualifications.

As set forth below, the Legislature has already included *within* the certification and *Williams* regimes all the flexibility and waiver exceptions permitted. It was error for the trial court to bless a new *ultra vires* exemption outside of those statutory frameworks. This Court need go no further to determine a reversal is warranted, and to direct the District thereby to follow

its mandatory duties, including by presenting any compliance difficulties to the proper state agencies for consideration.

If the Court reaches the District’s underlying impossibility contentions, they must be soundly rejected. The District’s principal legal assertion—that it lacks the ability under its agreement with the teachers’ union (the “MOU”) to execute involuntary transfers because it must obtain employee consent for every assignment—is patently absurd and contrary to the plain language of the MOU and the California Education Code. West Contra Costa Unified School District (WCCUSD) would likely be alone among all the state’s school districts to have bargained away, contrary to established law, its ultimate authority to direct its employees to go where needed in the best interests of the district’s educational mission. Try as the District might to give new meaning to the term “involuntary,” the plain language of the MOU, the District’s own conduct and public admissions, and the record statements of the head of the teachers’ union all establish that the District has *and had at the time of trial* the legal ability to remedy the *Williams* vacancies by means of involuntary transfers. This legal error at the heart of

the lower court’s decision—its misinterpretation of the contractual terms of the MOU—requires reversal.

The District also concedes it failed to seek waivers from the two expert state agencies, the Commission on Teacher Credentialing (CTC) and the State Board of Education (SBE), to excuse its noncompliance with teacher certification laws and the *Williams* statute. Here again, Respondents claim a lack of legal ability to obtain such waivers, arguing on appeal that the power of these agencies to grant exemptions is actually narrower than the plain language of their statutes. That is a legal contention that this Court can easily resolve. The plain language of the statute establishing the CTC’s waiver authority makes clear that the Commission’s waiver authority is much broader than the single, standard type of waiver the District refers to in its briefing. The statute confirms that even the typical waiver criteria can be waived by the Commission if a district’s need is great enough and its options limited. By refusing to test its hardship claims through the CTC or SBE waiver process, the District has evaded state oversight of its assignment practices.

Time and again in its Opposition, the District fails to demonstrate that it has exhausted all options to staff its

classrooms with permanent, certificated teachers. The District's Opposition acknowledges that it may not have been fully utilizing its involuntary transfer authority out of respect for the union's preference. The District also claims it is using other lawful options, including the Short-Term Staff Permit, but there is no record evidence to support this, and the District further admits to unnecessarily restricting these permits to rare "emergency circumstances." As to all the options the District mentions, the District makes only generalized assertions about its typical practices without providing specific evidence of any actions it took to fill the vacancies Petitioners identified.

It hardly comes as a surprise then, when considering the substantial evidence issues in this case (should the Court even reach the question), that the District has failed to meet its burden of demonstrating impossibility by having exhausted all means to secure year-long, certified teachers to remedy the *Williams* vacancies. The District fails to show that it actually attempted to utilize its involuntary transfer authority fully, to pursue local assignment options, all possible emergency permit solutions or that it even explored waivers with its current or alternative candidates. The kinds of generic, conclusory

statements that the District advanced below and cites here are not evidence, much less substantial evidence supporting a judgment. (*Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 26.)

The record evidence, in fact, demonstrates the opposite: that the District had available to it, at the time of trial, at least 20 later-disclosed fully credentialed teachers across the range of applicable subject matter certifications—more than enough to have cured the *Williams* vacancies. And further, that, if any hardships arose, the District had the ability to pursue waiver options before state agencies.

Petitioners are entitled to a writ that puts an end to the District’s practices of ignoring state certification laws and *Williams* mandates, of staffing its classrooms with uncertified individuals, and of evading state oversight and accountability. The students of Stege Elementary, Helms Middle and Kennedy High schools deserve no less.

II. ARGUMENT

A. The District Concedes That It Is Violating the Mandates of the Teacher Certification Laws and *Williams*.

There is no dispute that the District is blatantly violating the Education Code. California law mandates that all teachers in

California public schools “hold a valid teaching or service credential” to teach in a classroom. (Ed. Code § 44065(a)(1); see also Ed. Code § 44830(a).) California law also requires districts to promptly remedy valid complaints of teacher vacancies with a single, year-long, “certificated” teacher—i.e., authorized by the Education Code to teach in that classroom. (Ed. Code §§ 35186(i)(3); 44830.)

Despite these clear, decades-long legal mandates, the District is “covering” the vacancies still at issue at Stege Elementary, Helms Middle, and Kennedy High with unauthorized substitutes (i.e., substitutes teaching beyond their 30-day authorization), “rolling” substitutes (i.e., a different substitute every 30 days), and/or requiring teachers in *other classrooms* to cover the vacancies on an *ad hoc* basis along with their own classes. (1 AA047–067; 1 AA068–095; Ed. Code §§ 44830; 35186.) Each of these options violates California law. (Opening Br. at p. 20.) It has been nearly two **years** since Appellants filed *Williams* complaints, and the District was required to remedy these violations in 30 days, yet these violations remain as of the time of this appeal. As Appellants’ complaints remain unaddressed, the children in these classrooms

have been denied a qualified teacher, the most fundamental aspect of an education. (*Butt v. State of Cal.* (1992) 4 Cal.4th 668, 674 [holding that the “loss of six weeks of instruction would cause serious, irreparable harm to ... students and would deny them their ‘fundamental right to an effective public education’ under the California Constitution”, italics added].)

The District has never disputed this and does not do so in this appeal. (1 AA071.) The District admits that it is “not in compliance with the *Williams* Act, because it ha[s] vacancies . . . where the teachers in those classrooms only had a substitute teacher credential and were not legally authorized to teach the class for the full year.... The District does not dispute this noncompliance.” (Resp. Br. at pp. 47–48.)

The District insists, however, that it cannot be ordered to comply with the law because of “impossibility” due to the ongoing teacher shortage. (Resp. Br. at p. 4.) But the courts are not authorized to excuse compliance with the *Williams* statute or the teacher credentialing laws. The lower court’s duty was to require the District to comply, whether by assigning fully-credentialed teachers or using the statutory alternatives, including seeking waivers. “The writ must be issued” here given the undisputed

violations of these children’s fundamental rights and the lack of any other “plain, speedy, and adequate remedy, in the ordinary course of law.” (Code Civ. Proc. § 1086.)

B. There Is No Basis for the Court to Create an “Impossibility” Defense to the Teacher Certification and *Williams* Regimes.

The District’s undisputed refusal to fill the vacancies identified in Appellants’ *Williams* complaints with year-long, certificated teachers violates both *Williams* and the teacher certification statutes. The lower court absolved the District of its legal duties, however, by creating out of whole cloth an “impossibility” defense to those legal obligations. This was legal error. The lower court had no authority to create such a defense, whether due to this case being brought as a petition for a writ of mandate or otherwise. There is no dispute that the availability of an impossibility defense is a question of law subject to *de novo* review. (Resp. Br. at p. 35.)

1. The District does not demonstrate that the text or legislative intent of the *Williams* and teacher certification statutes support an impossibility defense.

The California Supreme Court has held that when “[n]either the text nor the purpose of the [statute] contemplates []

a showing of impossibility,” courts lack the power to “independently carve out exceptions for impossibility.”¹ (*Nat. Shooting Sports Found., Inc. v. State* (2018) 5 Cal.5th 428, 433, 436 (“*NSSF*”); see also *Bd. of Supervisors v. McMahon* (1990) 219 Cal.App.3d 286, 301, reh'g. den. and opn. mod. (Apr. 30, 1990).)

Here, neither the trial court nor the District point to anything in the text or purpose of Education Code sections 35186 or 44830 to support an impossibility defense. The Legislature did not include an express impossibility defense when adopting (and amending over many decades) the detailed statutory regime

¹ To the extent the District suggests Appellants waived the argument that there is no impossibility defense available here, the District is wrong. (Resp. Br. at p. 46.) There can be no waiver of issues of law: “[W]here the theory presented for the first time on appeal involves only a legal question determinable from facts which not only are uncontroverted in the record, but which could not be altered by the presentation of additional evidence,” it is automatically preserved. (*Redevelopment Agency v. City of Berkeley* (1978) 80 Cal.App.3d 158, 167.) Moreover, Appellants did expressly argue below the lack of an impossibility exception here. After the District argued that the writ could be denied on impossibility grounds, a section of Appellants’ reply brief below was entitled “The District’s Proposed ‘Impossibility’ Exception Is Meritless.” (1 AA188.) In that section, Appellants explained that “The District also contends that if it does have a duty to designate a single certificated teacher to the vacant positions, the Court should recognize an ‘exception’ to that duty where compliance is ‘impossible.’ ... *This argument is meritless.*” (*Ibid.*, italics added.) Appellants were not required to cite specific cases, such as *National Shooting Sports Fund*, to preserve the issue.

governing teacher qualifications and credentialing—even though there has been a teacher shortage in California for more than 25 years, starting well before the passage of the *Williams* statute.² (See also RT035.) Instead, the *Williams* statute requires school districts to remedy valid complaints of teacher vacancies within 30 working days without any mention of an impossibility exception. (Ed. Code § 35186(b), (f)(2), (i)(3).) The plain language of the statute requires teacher vacancies to be treated the same—remedied promptly without exception—as an unsafe condition like a gas leak. (*Ibid.*)

Nor does the trial court or District identify anything suggesting that the legislative intent contemplated an implied impossibility defense. Indeed, there is no discussion of legislative

² Policy analysts and academics have been discussing the widespread teacher shortage in California for decades. (See, e.g., (J.M. Pogodzinski, Cal. St. Univ. Fac. Research Fellows Programs, *The Teacher Shortage: Causes and Recommendations for Change*, at p. 7 (Jan. 2000) <<https://sor.senate.ca.gov/sites/sor.senate.ca.gov/files/ctools/%7BF707C2C6-67FF-4A1D-8D9A-45EAF3A825A1%7D.PDF>> [as of Sept. 8, 2025] [“The shortage of teachers in public schools is one of the most significant public policy issues facing Californians”]; see also Darling-Hammond, Symposium, *Access to Quality Teaching: An Analysis of Inequality in California’s Public Schools* (2003) 43 Santa Clara L.Rev. 1045, 1131 [noting the “current [teacher] shortages in disadvantaged schools”].)

intent in either the trial court’s order or the District’s brief on appeal. The District’s opposition does not even use the phrase “legislative intent” or the word “intent” (except in one quote from *NSSF*).

The legislative regime is, in fact, directly inconsistent with an impossibility defense, as Appellants have demonstrated. (Opening Br. at pp. 46–58.) The District makes no effort to rebut this showing. Most obviously, the statutory framework provides a series of alternative paths to compliance for districts unable to staff a “fully prepared” teacher. (Opening Br. at pp. 16–18.) The Legislature even included a process for districts to obtain waivers from two expert state education agencies, as a last resort: the CTC (for a waiver of teacher credentialing laws) and the SBE (for a waiver of other requirements of the Education Code). (2 AA362; Ed. Code § 44225(m)(1)(E); Ed. Code §§ 33050–33053.) The CTC has been granted very broad authorization, for example, to provide any “temporary exemptions when deemed appropriate by the commission” from the credentialing laws. (Ed. Code § 44225(m)(1)(E).) The crafting of these alternatives is entirely inconsistent with a legislative intent for courts to create

their own parallel system of “waivers” by way of an impossibility defense.

Indeed, the proposed impossibility defense here would directly undermine the legislative structure. Not only would it allow school districts to evade their legal obligations, but it would also allow them to evade the supervision of the expert state agencies that the Legislature tasked with overseeing teacher qualifications and credentialing. The statutory waiver process allows those expert agencies to decide whether and when school districts can be relieved of their obligation to follow standard certification laws and to monitor the districts’ ongoing compliance. (See, e.g., Ed. Code § 33051(a); Ed. Code. § 33053.) The waiver process ensures the state agencies are aware of the specific challenges that different schools districts are facing and allows them to compare the performance of nearby school districts. It provides critical information on which teaching credentials are most in need and where. It also enables the agencies to provide accurate reporting to the Governor, Legislature, and the public. (Opening Br. at p. 24.) A court-created and administered impossibility defense would both usurp the power the Legislature has granted to expert state agencies

and would undermine the agencies' ability to fulfill their broader missions. The lower court's decision here, for example, allowed the District to avoid compliance with its statutory obligations without even notice to the state agencies.

The District does not take issue with any of the above. The District expressly forgoes any argument that the lower court could have created an exception to the *Williams* and teacher credentialing statutes under *NSSF*. (Resp. Br. at pp. 48–49.) The District argues instead that despite *NSSF*, the courts can create an “impossibility” defense where relief is sought under a petition for a writ of mandate. (*Ibid.*) The District is wrong.

2. The writ process does not abrogate either *NSSF* or the force of the legislative mandate to provide every school child with a year-long, qualified teacher.

The District defends the decision below on the theory that different rules should apply to the writ petition here than the declaratory and injunctive claim in *NSSF*. (Resp. Br. at p. 48 [insisting “[t]his is a distinction with great meaning”].) Each of the District's arguments in support of this theory is wrong and contrary to the very cases on which it relies.

First, the District argues that because a “writ of mandate is an action in equity,” it is subject to the equitable maxim “the law never requires impossibilities,” codified as Civil Code section 3531. (Resp. Br. at pp. 42–44.) In support, the District cites cases dating from the 1860s to the 1950s, particularly *Sutro Heights Land Co. v. Merced Irrigation Dist.* (1931) 211 Cal. 670, 704–705.

But *NSSF* also involved “an action in equity” because it involved a “cause of action for declaratory and injunctive relief.”³ (*NSSF, supra*, 5 Cal.5th at p. 432.) Moreover, the Supreme Court did not deny that the impossibility maxim of Civil Code section 3531 applied to such actions. Instead, the holding of *NSSF* is that the maxim cannot supersede legislative intent. The Supreme Court explained the maxim provides no basis for courts to excuse compliance with a statute, even where it is impossible for defendants to comply, unless there is a legislative intent for such a defense. (*NSSF, supra*, 5 Cal.5th at p. 433.) The maxim is not a roving authorization for the courts to create

³ (*Sills v. Siller* (1963) 218 Cal.App.2d 735, 742 [“A proceeding in declaratory relief is one in equity”]; *DiPirro v. Bondo Corp.* (2007) 153 Cal.App.4th 150, 181–182, as mod. (Aug. 8, 2007) [“Injunctive relief is invariably an equitable remedy”].)

“impossibility” defenses wherever they see fit. As the District itself explains, the holding of *NSSF* is that impossibility can “excuse noncompliance with a statute” only when “the excusal constitutes an interpretation of the statute *in accordance with the Legislature’s intent.*” (Resp. Br. at pp. 49–50, italics altered.) As noted, the District and the lower court have made no effort to even suggest that the legislative intent here would accord with a court-created impossibility defense, and Appellants have shown the opposite.

The District, nonetheless, argues that *Sutro Heights* established a different rule for writ petitions, since a writ of mandate was denied in that case due to impossibility. But in *Sutro Heights*, the impossibility defense was expressly based on the legislative intent behind the statute. The Court found that granting the writ of mandate there would “violate the spirit of the law” because it would drive the irrigation district into bankruptcy, contrary to the legislative intent: “[I]t was never intended by those responsible for the enactment of the Drainage Act of 1907 that an irrigation district ... should be compelled to work its own destruction by undertaking to provide drainage facilities for the district, the expense of which is beyond its

financial ability to meet or pay for.” (*Sutro Heights Land Co.*, *supra*, 211 Cal. at p. 703.)

Notably, in *NSSF*, the Supreme Court did not distinguish *Sutro Heights* or *McMahon* as writ petition cases, as if there was some separate rule for writ petitions. Instead, the Supreme Court explained that *McMahon* and *Sutro Heights* applied the same rule as was applied in *NSSF*: Courts can recognize implied impossibility defenses only “where such an exception reflects a proper understanding of the legislative intent behind the statute.” (*NSSF*, *supra*, 5 Cal.5th at p. 434.)

All the cases cited by the District are consistent with this principle. For example, the District cites *San Diego Cnty. v. Milotz* (Cal. App. Dept. Super. Ct. 1953) 119 Cal.App.2d Supp. 871, 884, but in that case the court refused to recognize an impossibility defense in the absence of a legislative intent to excuse compliance. As the court explained, “[m]any acts required by law to be done within a specified time may and do become difficult, or seemingly even impossible of performance, but that possibility alone does not confer discretion to extend the plain time limit set up by the Legislature.” (*Id.* at p. 883.) *Milotz* explains that relief from a statute requiring the impossible must

be “addressed to the Legislature, not to the courts.” (*Id* at p. 884.) Similarly, here, the District’s claims of impossibility are properly addressed to either the Legislature or the expert state agencies, not the courts. (See also *McMahon, supra*, 219 Cal.App.3d at p. 301 [“relief from state mandates must come from the legislature and not from the courts”].)

The District cites also *People ex rel. Bd. of Sup’rs of Solano Cnty. v. Bd. of Sup’rs of Lake Cnty.* (1867) 33 Cal. 487, 492, but that case again supports Appellants’ position. The Supreme Court there *rejected* the argument being made by the District, i.e., that a writ can be denied merely because compliance with a statute is impossible.⁴ Even in 1867, the Supreme Court held that the courts must enforce legislative intent even if the parties or courts think compliance impossible: “Reading the provisions of the Act literally, and requiring a strict compliance with its terms, the Act would be void, because an exact compliance is impossible. But from the fact that the Act was passed, and no provision is made limiting its operation upon any contingency, it must be held

⁴ The District attributes to *Lake County* a lengthy quotation (Resp. Br. at p. 43) that does not appear in that case or the other authorities cited on that page.

that it was the intent of the Legislature that the Act should go into operation.” (*Bd. of Sup’rs of Lake Cnty, supra*, 33 Cal. at p. 492.) The Court absolved defendants from complying only with a specific deadline in the statute because of the rule that calendar deadlines in legislation (there, “the first Monday in March [1866]”) are “usually held to be directory,” rather than mandatory.⁵ (*Ibid.*) The Court did *not* hold, as Respondents claim, that impossibility of performance transforms an otherwise mandatory duty into a directory one regardless of legislative intent. (Resp. Br. at p. 43).

The District cites not a single case (despite mining caselaw back to 1867) in which a writ petition was denied on impossibility grounds absent a consistent legislative intent. If the trial court had interpreted the statutes consistent with the intent of the Legislature, it could not have excused the District’s compliance with the *Williams* statute and teacher credentialing laws.

Second, the District relies on the sometimes stated requirement for a writ petition that “the respondent has the

⁵ (But see *In re D.P.* (2018) 21 Cal.App.5th 154, 165 [“even directory time limits may be enforced by a writ of mandate compelling the agency to act”].)

ability to perform the duty.” (Resp. Br. at pp. 45–46.) But that requirement refers to the agency’s *legal authority* to comply with the writ, not whether compliance would be difficult or factually impossible. This can be seen by the formulation starting in the earliest cases: whether the respondent has the “*legal* ability to perform.” (*Briney v. Santa Ana High Sch. Dist.* (1933) 131 Cal.App. 357, 363, italics added.) In *Briney*, for example, the writ was set aside by the Court of Appeal because it might have required the school district “to perform an unconstitutional act.” (*Ibid.*) The District cites *Los Angeles Waterkeeper v. State Water Res. Control Bd.* (2023) 92 Cal.App.5th 230, 269, but the “inability to perform” there was again that the relief sought was beyond the *legal authority* of the agency: the “Legislature did not empower the Regional Board to enforce the mandates” at issue. (*Id.* at p. 270.)

The “ability to perform” requirement reflects the obvious principle that writs should not issue requiring public agencies to take actions that would be *ultra vires*. This requirement is entirely consistent with *NSSF*: If the Legislature did not grant an agency the authority to take some act, it would be consistent with legislative intent not to order the agency to undertake that

act. The District cites no case in which the “ability to perform” requirement was interpreted otherwise. Nor is there any suggestion that the writ here would require the District to take some *ultra vires* action; to the contrary, the writ here would require the District to come into compliance with the law.

Third, the District argues that a writ of mandate can be denied if it would “enforce an abstract right of no practical benefit to petitioner, or where to issue the writ would be useless, unenforceable or unavailing.” (Resp. Br. at p. 44.) Again, the District is mischaracterizing the legal principle. As demonstrated by the cases that the District cites, that principle concerns situations in which the proposed writ has been mooted by other events and would thus be a dead letter. (See *Kirstowsky v. Super. Ct. of Sonoma Cnty.* (1956) 143 Cal.App.2d 745, 749) [writ seeking public access to trial was “moot” due to completion of trial; court nonetheless proceeded to decide issues given importance of issues]; *Wilson v. Blake* (1915) 169 Cal. 449, 454 [rejecting writ petition seeking counting of votes that was mooted by the election being declared invalid].)

This case is not moot because many of the vacancies at issue still remain.⁶ Moreover, even if the legal principle were as the District suggests and even if the District could not fill the vacancies at issue (which as demonstrated below is not true), the issuance of the mandate would have practical benefit and usefulness. It would force the District, at a minimum, to approach the CTC and/or SBE to seek a waiver for its asserted staffing difficulties. Even that would provide substantial public benefit. (See Opening Br. at pp. 64–68.)

Fundamentally, the District’s arguments fail to account for Code of Civil Procedure section 1086, which states that a “writ *must* be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law.” (Code Civ. Proc. § 1086, italics added.) Courts have read Section 1086 to mean what it says: When the specific conditions of a writ are met (as here) and an agency fails to comply with its legal mandates (as here), the courts lack discretion to deny the writ. It “becomes

⁶ If there is any mootness here, this Court should nonetheless decide the appeal given the important public interest in resolving these issues and the risk that the same issue could arise again—just as was done in the appeal on which the District relies. (See *Kirstowsky, supra*, 143 Cal. App. 2d at p. 749.)

a matter of right.” (*Hudson v. Cnty. of Los Angeles* (2014) 232 Cal.App.4th 392, 408.)

The District has never disputed either the violation of these children’s fundamental rights nor the absence of any other plain, speedy, and adequate remedy at law for the violations of those rights. Rather, the District’s position is that there is no remedy for the violation of their fundamental rights and the District can continue to violate them. California law does not and should not permit that outcome. This Court need not engage further to conclude that Appellants’ writ should issue.⁷

⁷ In an egregious misquotation, the District suggests that Appellants accepted the possibility of an impossibility defense at the hearing. (Resp. Br at p. 28.) The District’s brief omits—without even an indication of ellipses—the key portion of counsel’s statement: that the court should issue “an order that they [the District] have to comply with the law and remedy [the] vacancies,” despite the claim of impossibility. (RT034:35–RT035:1.) (The wrong page numbers are also provided in the District’s brief.) Moreover, this colloquy came after the lower court had said it would recognize an impossibility defense. In that circumstance, counsel argued that the writ should still issue but if the District could show that it truly could not comply with the law even under a court order, then it might not be necessary to hold the District in contempt or impose other sanctions or “accountability” for violating the court’s order.

C. The District Did Not Establish that Compliance Was Impossible.

Even if the courts had the power to create a judge-made impossibility defense to the legislative regime here, the District has not established that compliance was actually impossible. The District does not deny that it has the burden of production and the burden of proof on the impossibility defense. (See *Majestic Asset Mgmt. LLC v. The Colony at California Oaks Homeowners Assn.* (2024) 107 Cal.App.5th 413, 427, review den. (Mar. 12, 2025) [party asserting impossibility has the evidentiary burden].)

The District has not met its burden because there are many options available to the District to comply with the law, as explained in Appellants' opening papers.⁸ (See, e.g., Opening Br. at pp. 16–20.) It is not enough for the District to insist that it is generally trying very hard and taking many steps to comply. To prevail, the District must establish that for *each* of the vacancies

⁸ The District wrongly asserts that a vacancy occurs under section 35186 “when a fully credentialed teacher is not assigned to a class for the entire school year.” (Resp. Br. at p. 14.) This is incorrect. The year-long teacher need only be “certificated” (Ed. Code Section 35186(i)(3)), not fully credentialed. A certificated teacher holds any type of lawful authorization for their position, which could be a full-credential, an intern credential, any number of emergency-style permits, or even a waiver. (Ed. Code § 44006; see 2 AA416–417.)

at issue here, *each* of these options was impossible or involved “extreme and unreasonable difficulty, expense, injury or loss.” (See *Majestic Asset Mgmt. LLC, supra*, 107 Cal.App.5th at p. 427.) This is an extremely high burden that the District has not come close to meeting.

Appellants begin by addressing two options for compliance that turn largely on issues of law: (1) the District’s legal authority to involuntarily transfer teachers from non-teaching roles and (2) the District’s ability to comply by obtaining waivers from state agencies. Even if there are some minor factual issues relating to these issues, both legal questions are subject to *de novo* review. (*People v. Aguilera* (2020) 50 Cal.App.5th 894, 908. [“mixed question of law and fact,” is subject to “the de novo standard of review” if the issue “is predominantly legal”].)

Appellants then address the District’s factual showing regarding the supposed impossibility of other avenues of compliance. As to those, the District has not met the substantial evidence standard to establish impossibility.⁹ As explained by a

⁹ The District incorrectly argues that Appellants waived their challenge under the substantial evidence standard by failing to set forth the material evidence in the Opening Brief. (Resp. Br. at pp. 52–54.) A perusal of the Opening Brief shows that it sets

leading opinion on the subject, “[s]ubstantial evidence’ is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value.” (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.) It “is not synonymous with ‘any’ evidence. Instead, it is substantial proof of the essentials which the law requires.” (*Ibid.*, quotation marks modified.) As the *Roddenberry* court explained, moreover, “isolated evidence” inconsistent with “the whole record” does not support affirmance. (*Id.* at p. 652.) Most importantly here, conclusory declarations or statements are not substantial evidence. Indeed, they are not evidence at all. (*Gilbert, supra*, 147 Cal.App.4th at p. 26 [“declarations that ... are ... conclusory are to be disregarded” as not competent evidence].)

forth all of the key evidence submitted to the trial court by the District, including its measures to fill the vacancies at issue, by among other actions, attending job fairs, posting on job boards, recruiting through Teach for America, obtaining temporary permits, and other programs. (Opening Br. at pp. 29–30, 36, 42.) The Opening Brief also extensively addressed and acknowledged Respondents’ claims that they could not involuntarily assign teachers due to the MOU, and that they could not obtain waivers from the CTC because the substitutes were not eligible. (*Id.* at pp. 31–32, 60–61.) Notably, the District points to no critical fact that was not addressed in the Opening Brief.

1. The District has not established that it would be impossible to fill the vacancies through involuntary transfers.

(a) The District has the legal authority to reassign teachers from non-classroom roles.

The most obvious solution to the illegal teacher vacancies would be for the District to reassign qualified teachers from non-classroom teaching roles and those with full credentials serving in administrative roles. Education Code section 35035(e) grants every school district (through its superintendent and board) broad authority to transfer teachers for the “best interest” of the district, i.e.,

the power to transfer a teacher from one school to another school at which the teacher is certificated to serve within the school district when the superintendent concludes that the transfer is in the best interest of the school district. (Ed. Code § 35035(e).)

In an effort to manufacture “impossibility,” however, the District repeatedly insisted below that it gave away its power to involuntarily transfer teachers without their consent in its contract with the teachers’ union, the “MOU.” (1 AA139; RT011:25; RT026:4–6; RT025:17–19; 2 AA441; RT082:23–RT083:3; RT084:12–15; RT095:5–9.) Respondents recycle this

legal fallacy in their appellate brief. (Resp. Br. at pp. 23–24; *id.* at pp. 66–68.)

The District’s argument, however, is contradicted not only by the plain language of the statute and MOU, but also by the actual conduct of the District in involuntarily transferring some 70 teachers over the last few years. The District used its power to involuntarily transfer some 30 teachers in the 2023–2024 school year, followed by another 20 teachers at the beginning of the 2024–2025 school year. (1 AA190–191 ¶ 6–7; 1 AA240; 1 AA242; 2 AA373 ¶ 6.)¹⁰ Then in January 2025—just weeks after

¹⁰ The trial court disregarded the December 2024 declaration of Mark Mitchell in support of Appellants’ motion for new trial on the grounds that it did not constitute newly discovered evidence. This holding was erroneous for two reasons. First, Appellants submitted this declaration in support of their contention that the trial court’s order denying the writ petition was an error in law under Code of Civil Procedure section 657(7), not the newly discovered evidence standard set forth in section 657(4). Moreover, in addition to its legal assertions, the declaration does in fact contain newly discovered evidence about the District’s continued use of involuntary transfers. (See *Aron v. WIB Holdings* (2018) 21 Cal.App.5th 1069, 1078 [setting forth standard for newly discovered evidence, including “that the party could not with reasonable diligence have discovered and produced it at the trial.”].)

Regarding the motion for new trial, Respondents also erroneously claim that a case, *Renfer v. Skaggs* (1950) 96 Cal. App. 2d 380, prohibited Appellants from arguing that the trial court’s order was “against law.” (Resp. Br. at p. 70.) As explained in Appellants’ reply in their motion for new trial, Respondents

persuading the lower court to the contrary—the District again invoked its power under § 35035(e) and the MOU to involuntarily transfer 20 more teachers “for the welfare of the District.” (Resp. Br. at p. 67.) The District has also publicly stated since the hearing on the writ petition that it has the power under section 35035(e) and the MOU to make whatever involuntary transfers it needs to “accommodate the school’s staffing needs,” directly contrary to its successful argument to the lower court. (2 AA468–470.)

A major basis of the lower court’s finding of impossibility was its belief that the District’s contract with the teachers’ union (the “MOU”) abrogated the reassignment power granted by Education Code section 35035(e). Based on the District’s repeated misrepresentations about the MOU, the lower court concluded that teachers “have MOUs. They have rights under the MOUs. The school district is not free to just say, ‘Hey, you with your math and science background, you’re going to go teach

reliance on *Renfer* is no longer good law, as the Supreme Court held seven years later that “issues of law may be re-examined on a motion for new trial” even when there are no issues of fact. (*Carney v. Simmonds* (1957) 49 Cal.2d 84, 90.)

at Helms.” (RT037:8–12.) In reality, the District has precisely that power and has repeatedly exercised it.

The trial court’s finding of impossibility based on the conclusion that the contractual terms of the MOU prohibit involuntary teacher reassignment constitutes legal error. First, no contract can abrogate the power the Legislature has given to school districts in Education Code section 35035(e) over teacher assignments, which power is intended to meet the fundamental right of every schoolchild to a meaningful education with a qualified teacher. (*City of Glendale v. Super. Ct.* (1993) 18 Cal.App.4th 1768, 1778–1779 [“governments cannot divest themselves by contract of the right to exert their governmental authority ‘in matters which from their very nature so concern ... the performance of essential governmental duties.’”].) Thus, the MOU could not prohibit the District from involuntarily transferring teachers to benefit schoolchildren, much less could any ambiguities in the MOU be construed to limit the District’s power to do so.

Second, nothing in the MOU’s terms restricts the District’s authority to make involuntary transfers under Education Code section 35035(e). As the District admits, it told the lower court

that the MOU permitted involuntary assignments “only . . . where there is a school closure or an enrollment issue and even then, the teacher would get to consent to which opening to fill.” (Resp. Br. at p. 27.) That was false. Nothing requires teacher consent to such an involuntary transfer. (2 AA338–339, Art. 14, § 3.) The MOU requires only that educators transferred for such reason have “the right to *indicate* preferences from a list of vacancies,” not to be granted their preferences. (2 AA339, Art. 14, § 3 ¶ 4, italics added.) More importantly, nothing in the MOU says that declining enrollment or school closures are the *only* circumstances in which the District has the authority to make involuntary transfers.

To the contrary, the next page of the MOU has a section, Article 14, Section 5 entitled “Administrative Transfer for Cause (Employer Initiated)” that governs transfers “for [a teacher’s] welfare and/or the welfare of the District.” (2 AA339, Art. 14, § 5 ¶ 1.) That broad authority in Section 5 is consistent with Education Code section 35035(e) and permitted transfers to address the vacancies at issue here. The plain language of the Section makes no reference to teacher consent.

The District’s continuing efforts to obfuscate its authority over reassignments are highly improper. At one point, for example, the District says that the “the MOU still prevented the District from placing teachers without their consent,” citing no MOU provision but only a conclusory statement to that effect. And then *in the very next sentence*, the District admits that it actually “involuntarily transferred twenty educators.” (Resp. Br. at p. 32.)

The District then argues that because Section 5 gives transferred teachers “the right to apply for any subsequent vacancy for which he/she is qualified,” the District cannot require transfers to a specific assignment when many vacancies exist. (*Id.* at pp. 67–68.) This makes no sense. By the literal terms of the MOU, teachers only have the right to “apply” for a “subsequent” vacancy. (*Ibid.*; 2 AA340.) Nothing in Section 5 allows a teacher to refuse a transfer, and nothing requires the District to accept any application for a subsequent transfer. (See 2 AA340, Art. 14, § 5 ¶ 1(d).) The District has full authority under Education Code section 35035(e) and the MOU Section 5 to

assign a qualified teacher to any vacancy and deny subsequent applications to transfer out of the assignment.¹¹

As noted, the District told the lower court that the MOU permitted involuntary transfers only for “school closure or an enrollment issue,” ignoring Section 5 entirely. (Resp. Br. at p. 27.) The District tries to explain away its bald mischaracterization of the MOU’s terms to the lower court by insisting that it had been “a long-held interpretation” of the District that “Section [5] only allowed transfers due to discipline”—as if the District changed its mind on the meaning of the MOU right after the hearing on this writ petition. (Resp. Br. at p. 67.) This is another falsehood. Neither the word, nor the concept of, discipline is mentioned anywhere in Article 14, Section 5 of the MOU. (2 AA339–340.) The only support the District cites for its supposed “long-held interpretation” is a declaration stating that it was *the union’s assertion* that Section 5 is limited to disciplinary transfers; the declaration pointedly does not say that was ever the District’s position. (2 AA446 ¶ 11.) Nor

¹¹ The District provides no evidence, notably, that it had been somehow forced to grant transfer applications for any of the 70 or so teachers it had transferred in recent years.

could it have been, given the dozens of involuntary transfers the District has imposed over just the past few school years.

In any event, the District now admits it can invoke “Section 5 pursuant to Education Code § 35035(e) and its own terms [so] that transfer could be made for the ‘welfare of the District.’”

(Resp. Br. at p. 67.) The District now concedes that the unremedied *Williams* vacancies—which were in existence at the time of the latest round of involuntary transfers—are among those the District itself has determined could be remedied by involuntary transfers “in the best interests of the school district” and “in the best interest of our students”. (2 AA378; 2 AA399, 2 AA468–470.)

The Court must correct the trial court’s error. Like every other district in California, WCCUSD has complete legal authority to make involuntary transfers for the welfare of the District to fill teacher vacancies. That legal determination alone eliminates the District’s alleged “impossibility” defense.

(b) *The District has not established that there were no qualified teachers available to reassign.*

As it is now undisputable that the District had the legal authority to use involuntary reassignments to fill the vacancies

at issue, the only remaining question is whether the District presented substantial evidence that such transfers were impossible because there were no qualified teachers available for reassignment. The District introduced no such evidence, let alone substantial evidence. Its arguments for why involuntary transfers would be impossible are based on speculation or obfuscation.

The District insists that it cannot be required to transfer teachers because these “employees” are “beyond its or the Court’s control.” (Resp. Br. at p. 68.) This is nonsensical. The law assumes employers have “the right to control and direct the activities of the[] employee or the manner and method in which the work is performed.” (*Brassinga v. City of Mountain View* (1998) 66 Cal.App.4th 195, 217.) And, as explained above, neither the statutory regime nor the MOU gives teachers a right to refuse involuntary transfers. That is why they are called “involuntary” transfers. Much of California’s legal system would collapse if employers could avoid complying with the law by claiming that their employees might not obey their commands.

The District points out that section 35035(e) requires the teachers to be credentialed to be transferred. (Resp. Br. at p. 68.)

But the District has not even attempted to show that it lacks credentialed teachers in either non-classroom roles (such as curriculum development) or in administrative positions who could fill the vacancies at issue. In response to the petition for a writ of mandate, the District submitted a single evidentiary declaration from its Associate Superintendent of Human Resources, Camille Johnson. (1 AA152–156.) With respect to involuntary transfers, Ms. Johnson repeated the falsehood that the MOU and the Education Code require the teachers to consent to all transfers. (1 AA155 ¶ 10.)

But Ms. Johnson pointedly did not state that the District lacked teachers in non-classroom or administrative roles with the appropriate credentials. Instead, she suggested the District disfavored transferring such teachers because it would leave vacancies in their existing positions. (*Ibid.*) She also said there were not enough credentialed “administrators”—with no mention of teachers in non-classroom roles—to fill *all* the District’s vacancies. (*Ibid.*) This is not substantial evidence of impossibility of filling the vacancies at issue in this writ petition through involuntary transfers.

If that were not enough, Ms. Johnson’s declaration and the District position on involuntary transfers were entirely contradicted just weeks later when the District circulated a list of **40** credentialed teachers in non-classroom roles who could be reassigned to classroom teaching positions.¹² (2 AA374 ¶6; 2 AA380–387; 2 AA447 ¶ 16 [Ms. Johnson not disputing accuracy of lists].) Of those, only 20 teachers were then involuntarily reassigned to fill classroom vacancies. (2 AA373–374; 2 AA447.) Many of the teachers identified in that list of 40 had the necessary credentials for the vacancies at issue here, as shown in the summary chart below.

¹² The names of the teachers were redacted at the request of the declarant. The aligned columns of the spreadsheet are unfortunately printed across multiple pages.

Vacancy ¹³	Credential required ¹⁴	Number of teachers with matching credential identified in December 2024 list
Stege 5th grade	Multiple Subject Credential	24
Helms ELA	Single Subject Credential: English	3
Helms Math (2)	Single Subject Credential: Math	4
Kennedy APP	Multiple Subject Credential	24

¹³ These vacancies reflect those in existence at the *Williams* complaint schools in December 2024 when the District identified the 40 individuals to involuntarily reassign. They both overlap and differ slightly from the vacancies existing at the *Williams* schools at the time of the writ hearing in October 2024. (2 AA389–393.)

¹⁴ A Multiple Subject Teaching Credential authorizes instruction in all subjects in a self-contained elementary classroom, such as 5th grade class. (Ed. Code § 44259(b); Cal. Code Regs., Tit. 5, § 80413(b).) A Single Subject English credential authorizes instruction in departmentalized English classes at the secondary level. (Ed. Code § 44259(b); Cal. Code Regs., Tit. 5, § 80004(a).) A Single Subject Mathematics credential authorizes instruction in departmentalized math classes at the secondary level. (*Ibid.*)

The Kennedy APP class is self-contained and covers multiple subjects, and therefore it requires a Multiple Subject Teaching Credential. (Ed. Code § 44259(b); Cal. Code Regs., Tit. 5, § 80413(a); see also 1 AA095.)

Thus, beyond a lack of substantial evidence supporting impossibility, there is ample evidence that the vacancies at issue here could have been remedied through involuntary transfers.

On top of the teachers in non-classroom roles, there are easily dozens of fully credentialed teachers serving in the district office in administrative positions who could be reassigned to fill the vacancies. By way of comparison, the Los Angeles Unified superintendent reassigned some 700 teachers in 2022 from the district office and non-classroom-based assignments to fill vacancies. (1 AA249.) The District has provided no evidence beyond conclusory statements that it even attempted to reassign a single administrator to fill a *Williams* vacancy.¹⁵

The District candidly discloses the real reason the vacancies remain in these five classrooms. The District explains

¹⁵ The District simply asserts that administrators must be assigned at the beginning of the year, as though that were an insurmountable barrier to reassignment. (2 AA449 ¶ 21.) After all, the *Williams* petitions here were filed long before the 2024–2025 school year began. At a minimum, the District should have reassigned the administrators needed to fill classroom vacancies at the beginning of the last school year. If the District were adhering to its obligations to staff classrooms with permanent certified teachers and acting competently to actually exhaust all options, it would be regularly reassigning at least some administrators at the beginning of each school year.

that reassigning teachers in non-classroom roles or administrators to fill these vacancies would be “untenable” because those people are doing “essential” work and their positions would then be vacant until the next school year. (Resp. Br. at p. 24; 1 AA155 ¶ 10.) That the District fears reassignment would cause inconvenience or difficulty in other parts of its operations does not establish impossibility. Circumstances that “may make performance more difficult or costly than contemplated ... do not constitute impossibility.” (*KB Salt Lake III, LLC v. Fitness Internat., LLC* (2023) 95 Cal.App.5th 1032, 1059.)

More importantly, that the District would rather its discretionary coaching positions be filled or its administrative tasks be completed than these children be provided a qualified teacher cannot supersede the Legislature’s mandate. The Legislature has decided that every student in the State, in every classroom, first and foremost needs a qualified teacher assigned for the year. (Ed. Code § 35186.) Respondents have identified no corresponding state mandate that literacy coaches or vice-principals or district curriculum advisors, however valuable, must be provided—because no such mandate exists. Neither the

courts nor the District can ignore the teacher mandate because they believe non-classroom or administrative work is more “essential.” As the court explained in *McMahon*, that a county’s priorities conflict with the State’s mandates does not create impossibility or constitute a defense to a writ of mandate. (*McMahon, supra*, 219 Cal.App.3d at p. 286.) Where “a conflict between statewide priorities and local priorities, the statewide priorities must prevail.” (*Id.* at p. 300.) If the District does not agree with its statutory mandate, its remedy is to seek change from the Legislature.

To be clear, Appellants have not asked for a writ of mandate requiring involuntary transfers, much less that any particular teacher be ordered to fill any particular vacancy. Appellants seek a writ of mandate requiring compliance with the teacher credentialing laws and the *Williams* statute. The point here is that involuntary transfers provide the District with at least one viable option to comply with the law, so that it is not impossible for the District to comply.

The lower court’s conclusion that compliance was “impossible” was error. And in the absence of impossibility, there is no basis for the writ to have been denied.

2. As a matter of law, the District could seek waivers from the CTC and SBE.

Separate from the transfer authority under Education Code section 35035(e), the District could have come into compliance with the law by obtaining waivers from either the CTC or SBE. The waiver process not only ensures that expert agencies are evaluating district claims of “impossibility,” but it also ensures the agencies’ continued supervision of a school district’s compliance with the teacher credentialing laws. This supervision includes oversight of the district’s ongoing mentoring and support of under-prepared teachers with less than full credentials.

The trial court committed legal error in accepting the District’s claims that (i) CTC waivers of teacher certification requirements are limited to specific circumstances that it could not meet and that (ii) the SBE cannot grant a waiver of the *Williams* requirements. The legal authority of these agencies to grant waivers is quite broad, and nothing would have prevented the District from seeking appropriate waivers. The District simply failed to avail itself of either remedy—a fact that is not disputed by the District or by any evidence in the record. The

scope of the agencies' authority to grant waivers is an issue of law subject to *de novo* review.

(a) *Waivers from the CTC*

Education Code section 44225(m)(1) grants the CTC broad authority to grant exemptions from teacher certification requirements. Under the plain language of the statute, the CTC can grant school districts any “temporary exemptions” that are “deemed appropriate by the commission.” (Ed. Code § 44225(m)(1)(E)). The statute imposes no limitations on what “temporary exemptions” the CTC can provide.¹⁶

By regulation, the CTC has codified rules for some types of waivers it can issue. (Cal. Code Regs., Tit. 5, § 80120.) One

¹⁶ Individuals who have received a CTC-approved waiver when a district has demonstrated, among other things, that it has exhausted all options for assigning a better-prepared educator, are considered legally “certified” and, where assigned for the whole year, would satisfy the *Williams* requirement for a single, designated permanent certified teacher. (Ed. Code §§ 44006; 35186; 33050(a); Cal. Code Regs., Tit. 5, §§ 80121, 80122; see also 2 AA367–368 ¶¶6, 7; 2 AA416.) Importantly, such individuals have been legally sanctioned by the state through its statutory certification framework, not assigned by the unilateral actions of a district or approved by a court outside of state purview. As such, waived individuals would be subject to CTC oversight, required district preservice training, and individualized support and supervision (Ed. Code § 44225(m)(1); 1 AA198; 1 AA203), none of which occurs for even 30-day substitutes, much less unlawful year-long ones.

standard category of waiver for which the CTC has established rules is called a “Variable Term Waiver,” which allows a district to assign otherwise uncertified individuals to cover an assignment for an entire school year while the district looks for a fully credentialed teacher. The general requirements for a Variable Term Waiver are set forth in implementing regulations, Cal. Code Regs., Tit. 5, § 80120(b) and Cal. Code Regs., Tit. 5, § 80122(g), and in a handbook that is issued by the CTC.

The District insists that the *only* waiver the CTC could grant for these vacancies is the typical Variable Term Waiver, and that there are no candidates in the District who could meet the requirements for such a waiver. The District argues, in essence, that the CTC’s broad statutory authority to grant exemptions is limited to the standard waiver type for which the CTC has provided regulatory guidance. There is no statutory or case law support for that contention. Nothing in the statutory text of section 44225(m) or in the regulations suggests that the CTC’s authority to grant “temporary exemptions” is limited to the waiver types for which regulations have been adopted. The plain language of section 44225(m) provides, instead, that the CTC can provide any kind of “temporary exemptions” it deems

appropriate. California courts must be careful not to unnecessarily limit the authority of expert state agencies. (See, e.g., *Am. Fed'n of Lab. v. Unemployment Ins. Appeals Bd.* (1996) 13 Cal.4th 1017, 1039 [warning courts not to “limit an agency’s powers to those expressly granted, because the statutory scheme may ‘necessarily imply’” greater powers]; *Rich Vision Centers, Inc. v. Bd. of Med. Exam’rs* (1983)144 Cal.App.3d 110, 114 [agencies may exercise additional powers necessary for the efficient administration of express statutory powers].)

Respondents claim that because Code of Regulations, Title 5, section 80120(b) “effectuate[s] the waiver authority granted in [section] 44425(m)(1),” the regulation also limits the CTC’s power to grant other types of waivers listed in Section 44425(m)(1). (Resp. Br. at p. 59). This is not only nonsensical, but it is also inconsistent with the plain text of the regulation. Section 80120(b) does not state nor imply that it limits the categories of waivers and breadth of exemptions listed in Section 44425(m)(1). Indeed, section 80120(b) does not use the term “temporary exemption”—the type of exemption listed in Section 44425(m)(1)(e)—in its text at all. Section 80120 simply sets forth two types of waivers (Short-Term Waivers and Variable Term

Waivers) the CTC can issue, without any language restricting the CTC's authority to grant *other* types of waivers.

Moreover, even if it were true that the CTC has limited its own authority to grant a Variable Term Waiver in its regulations, nothing would prevent the CTC from waiving the requirements for a Variable Term Waiver itself—including the requirement that a teacher be pursuing a credentialing program. The Director of the CTC, Dr. Mary Sandy, has confirmed that “[T]he Commission’s waiver authority is broad and includes the ability to waive [certification requirements] for a standard variable term waiver such as the requirement the candidate enroll in a teacher preparation program.” (2 AA370.)¹⁷ The District’s response is to argue—without any supporting citation—that it “strains credibility” that the CTC would waive the requirements for a

¹⁷ The trial court improperly disregarded Dr. Sandy’s declaration on the basis that it did not constitute “newly discovered evidence.” This was error. Dr. Sandy did not set forth new facts or evidence within the meaning of Code of Civil Procedure section 657(4). Instead, the declaration clarifies legal issues that were before the trial court, such as the CTC’s legal authority to issue waivers and the District’s legal ability to make involuntary transfers. Declarations that are based “in fact,” or that constitute “an argument of law and not a declaration of any facts not already of record” are properly considered on a motion for new trial. (*Kuhlmann v. Pascal & Ludwig* (1970) 5 Cal.App.3d 144, 156.) The trial court abused its discretion in holding otherwise.

Variable Term Waiver. The District's own speculation as to whether the CTC would exercise its authority to grant the District a waiver is not sufficient to establish legal impossibility. Moreover, if the CTC does refuse a waiver, that would reflect an informed policy judgment by an expert agency that the District's circumstances do not justify excusing its compliance with the Education Code. The lower court's usurpation of that decision-making fundamentally undermines the system of oversight established by the Legislature.

Turning to the District's insistence that it has no candidates eligible for a Variable Term Waiver to fill the *Williams* vacancies, there is no substantial evidence to support that contention. The District cites (Resp. Br. at p. 25) the declaration of its counsel (2 AA268–269 ¶ 8), which merely relates a hearsay statement that the three substitutes illegally staffed at *one* of the three schools at issue do not qualify for a waiver for various reasons, including insufficient college credits. Hearsay does not constitute substantial evidence.¹⁸ (*In re Lucero*

¹⁸ An affidavit filed later by the hearsay declarant says something different: that none of the substitutes *wants* to get a teaching credential, not that they are ineligible. (Compare 2 AA268–269 ¶ 8 *with* 2 AA445 ¶ 9.)

L. (2000) 22 Cal.4th 1227, 1244 [“[m]ere uncorroborated hearsay or rumor does not constitute substantial evidence”].)

But even if the hearsay evidence is accepted, it would not establish the impossibility of seeking a Variable Term Waiver. The vacancies, obviously, could be filled with other people who would be eligible for a Variable Term Waiver. On that point, the District falls back on generic claims that it is “doing all it can,” that it “utilize[s] every single avenue possible for every position before using a substitute.” (Resp. Br. at p. 25.) But this refrain is unsupported by evidence of any concrete actions to fill the *Williams* vacancies by way of waiver candidates. Conclusory statements are not evidence. (*Gilbert, supra*, 147 Cal.App.4th at p. 26.)

To establish impossibility, the District must show that it would be *impossible* or constitute “extreme and unreasonable difficulty, expense, injury or loss” (*Majestic Asset Mgmt. LLC, supra*, 107 Cal.App.5th at p. 427) to obtain a waiver from the CTC. The District cannot do that merely by showing (even ignoring the hearsay nature of the evidence) that it has chosen to staff these vacancies with people with insufficient college credits,

or by pointing to other challenges to obtaining one kind of waiver from the CTC.

(b) *Waiver from the SBE*

Respondents also could have sought a waiver of their *Williams* obligations from the SBE. Education Code section 33050(a) provides that a school district “may request the state board to waive all or part of any section of [the Education] code or any regulation adopted by the state board,” with certain exceptions not applicable here. Under section 33050(a), the *Williams* vacancy remedy and timeline are subject to grants of waivers by the SBE. (Ed. Code §§ 33050–33053 [granting SBE broad power to waive any provision of Education Code].) There is no dispute that the District never sought such a waiver.

Respondents seem to concede that *Williams* is waivable under the plain language of section 33050(a), as they note that “the Williams Act is not explicitly listed as a statute that cannot be waived by the SBE.” (Resp. Br. at p. 60.) Nonetheless, Respondents argue, without citation to any authority, that “in essence” *Williams* is not waivable because waivers from credentialing requirements are exempted from the SBE’s waiver authority under section 44425(m)(2). This argument invents

exceptions to the statute that do not exist and fundamentally misconstrues the requirements of *Williams*.

Williams is not a credentialing statute, and therefore it is not one of the statutes that is exempted from the SBE's waiver authority under section 44425(m)(2). *Williams* sets forth a complaint procedure that mandates that districts promptly "remedy" valid complaints about instructional materials, school facilities, and teacher vacancies. (Ed. Code § 35186.) *Williams* does not itself set forth the requirements for what it means to be a certificated or credentialed teacher; those requirements are set forth in Education Code section 44259 et seq. Thus, while the SBE cannot waive certification requirements, it could waive the requirement that the certified teacher be a "single designated" individual "for the entire year" or the *Williams* general 30-day deadline to remedy a teacher vacancy. (Ed. Code § 35186(b) & (i)(3).)

It is true that the first venue for the District to raise its hardship claims concerning staffing vacancies should have been the CTC. But it is also true that, were the District unable to obtain a waiver from the CTC, the District had another possible

venue in which to present its hardship claims. The District pursued neither option.

3. The District failed to present substantial evidence that it was impossible to staff the vacancies through other means.

The District claims that it pursued a host of other alternative options to fill the vacancies, including internship programs, recruiting efforts, Provisional Internship Permits (PIPs), Short Term Staff Permits, and special allowances for teachers to teach outside of their credentialed areas. (Resp. Br. at pp. 22–25.) The trial court accepted these representations and concluded that the District was doing all it could to fill the vacancies. (RT036:6–9.) The trial court erred, however, because the District provided only conclusory statements of its general policies, unsupported by specific, admissible evidence showing that it was impossible to fill the vacancies at issue here through these means. Conclusory statements do not constitute substantial evidence. (*Gilbert, supra*, 147 Cal.App.4th at p. 26.)

It is glaring that at no point did the District introduce evidence explaining what it did to fill the specific vacancies at issue here. When asked what specific steps were taken to fill each vacancy at issue in this case, the District resorted again and

again to making generalized statements like “we utilize every single avenue we can for every position before we get to a substitute.” (2 AA279:19–20.) The District’s brief on appeal takes the same approach, repeating the conclusory mantra that the District tries to hire whatever teachers it can, uses local assignments and emergency permits when possible, applies for whatever waivers it can, and generally does all it can—without any specifics as to the *Williams* vacancies here. (See, e.g., Resp. Br. at pp. 17, 53.)

But even at a generalized level, the District provides no evidence for having attempted to use the many tools the Legislature and the CTC have made available to it for complying with its statutory mandate. Those omissions again demonstrate that there has been no showing of impossibility with substantial evidence. For example, as Appellants note in their opening brief (see Opening Br. at p. 17), the District fails to provide any record evidence that it even tried to use “local teaching assignments,” also known as a Local Assignment Option (“LAO”) to fill the *Williams* vacancies.¹⁹ LAOs are one of the many lawful one-year

¹⁹ LAOs, which are approved by local school boards, allow fully credentialed teachers to serve in an assignment outside of their

authorizations to fill teacher vacancies if the District cannot reassign a teacher who is properly certificated for the vacancy. (1 AA095–096.) Of the 40 credentialed teachers the District identified as available to be involuntarily transferred in December, almost all of them were eligible for an LAO transfer to cover the vacancies at issue here. (2 AA380–387.) Yet the District did not show that it approached and was refused by any of the nearly 40 teachers it identified as eligible for transfers, much less that it asked any other teacher on staff if they were willing to fill one of the vacancies here on a limited assignment basis.

Similarly, the District has established no record of using Short-Term Staff Permits (STSPs) “when there is acute staffing need.” (Cal. Code Regs., Tit. 5, § 80021; see also Opening Br. at pp. 18, 21.) Though the District’s brief claims that “[t]he District

authorized subject matter credential area. (1 AA095–096; see Ed. Code §§ 44256(b), 44258.2, 44258.3(a), 44258.7(c),(d), 44263 and Cal. Code Regs., Tit. 5, § 80027(a)(6).) Instead of demonstrating its LAO efforts, Respondents attempt to use the LAO option to blur the line between two distinct situations: the typical case where a fully credentialed teacher is involuntarily transferred to a class *within their authorized subject matter*—where no consent is required—and the narrow circumstances where consent is necessary, such as when a teacher is asked to serve on an LAO *outside their certified subject matter area*. (Resp. Br. at p. 68.)

also used the CTC’s Short Term Staff Permit,” (Resp. Br at p. 22), *there is no record evidence of such*. In fact, Associate Superintendent Johnson’s declaration never identifies a single instance when the District used a STSP. (1 AA155.) Respondents’ citation in support of its use of STSPs (2 AA291) refers instead to Provisional Intern Permits (PIPs), which are a different type of permit. The District argues on appeal that STSPs are “restricted to times when a teacher goes on leave, where there is an unexpected rise in enrollment, or when an applicant is not yet ready for a credential program.” (Resp. Br. at p. 27.) That is incorrect. The STSP regulation demonstrates that those so-called “restrictions” are but illustrative examples (“including but not limited to”) of appropriate uses, not an exclusive list. (Cal. Code Regs., Tit. 5, § 80021(f)(2).) Instead, STSPs can be used whenever “an employing agency needs to fill a classroom immediately based on an unforeseen need.” (*Ibid.*) By ignoring the more generally applicable STSPs, the District is unduly limiting its ability to remedy vacancies.²⁰

²⁰ The District also fails to mention, much less establish substantial evidence for, its attempted use of Teaching Permits for Statutory Leave (TPSLs). (See 1 AA034; see also Opening Br. at p. 18.) TPSLs are the preferred and primary mechanism for

In sum, the District cannot establish impossibility because it has not shown with substantial, non-conclusory evidence that it has exhausted the numerous options available to remedy the vacancies at issue here. To establish its impossibility defense as a matter of law, the District would have to demonstrate it had no options available to it. It has been unable to meet that difficult burden.

4. The District’s contention that substitutes are just as good as other options lacks merit.

Furthermore, the District’s claim that substitutes are just as good as other options is irrelevant, incorrect, and unsupported by substantial evidence. The District’s casual dismissal of the harms caused by unqualified and uncertified substitutes reveals a disregard of the minimum teacher quality protections for students embodied in state certification laws. The District claims that substitutes are qualified to be in classrooms for an extended period—contrary to the judgment of the Legislature and the

districts to cover teachers out on statutory leaves (*e.g.*, pregnancy and disability, family and medical, industrial accident and illness, etc.) when a fully-credentialed teacher is not available. (Cal. Code Regs., Tit. 5, § 80022.) Yet, the District demonstrates no awareness of or effort to use TPSLs.

CTC—because substitutes must pass the California Basic Educational Skills Test (CBEST). But that is not true at all. To obtain an Emergency 30-Day Substitute Teaching Permit all that is required is a B.A. Degree and completion of fingerprinting. (Ed. Code §§ 44252; 44300.)²¹

The District mistakenly conflates substitutes with those authorized to teach under PIPs. But people teaching under PIPs have completed a minimum amount of relevant course work to obtain their one-year permit as they prepare to enter an intern program (Cal. Code Regs., Tit. 5, § 80021.1(a)(3)), and receive specified “orientation, guidance and assistance” from the district. (*Id.*, § 80021.1(a)(5)(B)-(D).) Substitutes are not required to satisfy the subject matter, training and district support requirements that PIPs require (see *id.*, § 80021.1(a)(1)–(5)), which is why substitutes are not certified to teach beyond their 30 or 60-day authorization period.

²¹ Education Code section 44252 was amended by the Legislature last summer to allow possession of a B.A. to satisfy demonstration of the basic skills requirement. (Cal. Senate Bill No. 153, Ch. 38, Stats 2024, Sec. 28; see, e.g., Ed. Code § 44252(b)(12).)

The District claims that its substitutes attend “faculty meetings and professional development training” and are treated as “full-time regular teachers.” (Resp. Br. at p. 8.) That is cold comfort to the students subjected to instruction from unqualified individuals for whom the District is providing no particular extra support and supervision as occurs with PIPs.

Substitutes remain unequivocally unqualified to teach in the same classroom for an entire school year. The Executive Director of the CTC has confirmed that substitutes “are not certified beyond a caretaking 30-day role precisely because they are not required to have any of the specialized subject matter or pedagogical training that would satisfy the State that they were qualified to serve in such an important role.” (2 AA368.)

Substitutes “are not trained in how to teach” and lack the preparation to meet the specialized needs of California students, “particularly special education students and English Learners.” (*Ibid.*) The California Teachers Association (CTA) has reported that credentialed teachers have had to “support under-trained substitutes and tutor their students ... while, critically, students have missed out on the educational opportunities that flow from having a credentialed teacher in every classroom.” (CTA Letter,

Ex. 11 in Support of Motion to Grant Calendar Preference and Set an Expedited Briefing Schedule.) Appellants have provided specific examples of harm including English learners and newcomer students not receiving proper monitoring or ongoing language support. (2 AA523.) At Stege, for example, a substitute’s disruptive yelling forced Appellant Cleare to close her classroom door to prevent interference with her own students. (2 AA526.)

D. The District’s Other Objections to the Writ Fail.

Throughout the Opposition, the District insists that it cannot be compelled to fulfill its legal duties because such actions require the participation of third parties, i.e., job applicants, who are outside the District’s control and because there is discretion on the District’s part regarding how to fill a vacancy and with whom. These arguments fail both legally and factually.

As a matter of law, the Court may issue a writ of mandate to compel an action even where the approval and cooperation of third parties is required. The District does not cite a single case to support its argument claiming otherwise. In *Kern County Hospital Authority v. Department of Corrections and Rehabilitation* (2023) 91 Cal.App.5th 1313, for example, the

appeals court upheld a writ of mandate that required the Department of Corrections to fulfill its legal duty to obtain the Hospital Authority's agreement before transferring parolees to the Authority. (*Id.* at p. 1334.) The Department objected, as the District does here, that this duty was not subject to writ because it required the approval and cooperation of a third party. The Appeals Court rejected this premise, explaining that a writ was appropriate "even though the Department will need the approval and cooperation of the Hospital Authority in effecting the transfer." (*Ibid.*; see also *Morris v. Harper* (2001) 94 Cal.App.4th 52, 62 ["Obtaining relief by means of mandate was appropriate even though Harper will need the approval and cooperation of third parties to comply with the court's directive."].) Similarly, here, the District can be compelled to fulfill its legal duty to remedy teacher vacancies even if those actions require some degree of third-party participation.

Moreover, the requested writ does not *require* third-party participation. Appellants have not asked for a writ requiring the District to "force an individual to apply for its many vacant positions," or to "force the candidate to take the job" once offered. (Resp. Br. at p. 64.) These are strawman arguments invented by

Respondents. Instead, Appellants have asked for a writ that can be satisfied by the District in any number of ways through actions that *are* within its own control, such as involuntarily transferring teachers from one school or classroom to another, or obtaining waivers from the CTC and SBE. As Appellants have demonstrated, the District has statutory authority to transfer teachers without the approval of those teachers, who are employees of the District and subject to its control.

The District also wrongly suggests that, because there is inherent discretion in the process of filling a vacancy, the Court may not order the District to take action to fulfill this duty. Appellants do not dispute that the certification requirements and *Williams* give the District substantial discretion in *how* to fulfill its obligations, but that does not mean courts are powerless to require compliance. As the Court of Appeal has explained, “[w]hile a party may not invoke mandamus to force a public entity to exercise discretionary powers in any particular manner . . . mandate is available to compel the exercise of those discretionary powers in some way.” (*Ellena v. Dept. of Ins.* (2014) 230 Cal.App.4th 198, 205; see also *Galzinski v. Somers* (2016) 2 Cal.App.5th 1164, 1174 [granting writ of mandate and explaining

that “while the department and its personnel have a ministerial duty to conduct some sort of investigation into every citizen’s complaint, the procedure leaves it to the discretion of the department and its personnel to determine what kind of investigation is reasonably necessary in each case.” Italics omitted].). Appellants have not requested that the District be ordered to fill the vacancies in any particular way, to seek waivers, or to use involuntary transfers. Appellants ask only that the District be ordered to comply with the teacher credentialing and *Williams* mandatory duties in ways that demonstrate the lawful exercise of discretion.

The District’s effort to distinguish *Doe v. Albany* fails. (*Doe v. Albany Unified Sch. Dist.* (2010) 190 Cal.App.4th 668, 673.) *Doe* is analogous and instructive. The statute in *Doe* stated that school districts “shall” provide physical education of at least 200 minutes per 10 school days. (*Id.* at p. 676.) Much like the credentialing statutes and the *Williams* statutes, the statute provided broad discretion to school districts on the form of compliance, including the kinds of physical activities that might comply with that requirement. (*Ibid.*) Given the flexibility and discretion accorded to districts, the trial court held the statutory

duty discretionary, rather than mandatory, and declined to issue a writ against a non-complying district. (*Id.* at p. 673.) The Court of Appeal reversed and held that, because the statute used the term “shall” and the Legislature had set minimum requirements for physical education, those aspects of the statute were mandatory and could be enforced through a writ of mandate, even if the form of compliance was within the school district’s discretion. (*Id.* at pp. 677–678.)

The District argues that *Doe* is inapposite because the school district there “had the power to alter its school schedules,” whereas here, the District’s compliance with the law is contingent on the discretion of teaching applicants. (Resp. Br. at pp. 62–63.) As already explained, there are solutions to the vacancies well within the District’s sole power. Even the school district in *Doe* had to rely on the cooperation of its own teachers and students. The relevance of *Doe* is that it demonstrates that regardless of the District’s broad discretion over *how* to comply with the teacher credentialing statutes, the courts can (and must) order the District to fulfill its mandatory obligation to provide legally authorized teachers in each classroom.

III. CONCLUSION

For the reasons stated above and in their Opening Brief, Appellants respectfully request that the Court of Appeal reverse the trial court's orders, with instructions to issue a writ of mandate directing the District to follow state certification laws and to remedy *Williams* teacher vacancy complaints as required by Section 35186, including the teacher vacancies at Stege Elementary School, Helms Middle School, and Kennedy High School, and further to halt the ongoing practice of assigning substitutes to teach in the same classroom beyond their authorized 30- or 60-day period.

DATED: September 8, 2025

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PROOF OF SERVICE

SAM CLEARE, et al. v. WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT. et al.

**California Court of Appeals, First Appellate District, Division Two,
Case No. A173289**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 350 South Grand Avenue, Fiftieth Floor, Los Angeles, CA 90071-3426.

On September 9, 2025, I served true copies of the following document(s) described as on the interested parties in this action as follows:

1. APPELLANTS' REPLY BRIEF

BY ELECTRONIC SERVICE: I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. At the time of filing, I electronically served participants in the case who were registered TrueFiling users via the TrueFiling system. Participants in the case who were not registered TrueFiling users were served by mail or by other means permitted by the court rules, as indicated below:

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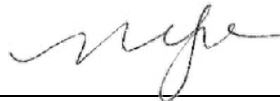
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BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid as indicated below:

Clerk of the Superior Court for the State of California,
County of Contra Costa
The Honorable Benjamin T. Reyes II
Hon. Terri Mockler
Department 16
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 9, 2025, at Los Angeles, California.



Myrna E. Martinez