



Gov. Davis to students: Let them eat lawyers

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By Peter Schrag

--Gov. Gray Davis' costly decision to sue 18 California school districts, among them Los Angeles, Long Beach, Fresno and Oakland, makes clearer than ever the bankruptcy of the state's claim that it is providing adequate educational resources for its neediest students. It also underlines the hypocrisy of state education policies in which everyone is supposed to be accountable except the state itself. The suits, filed by the governor's high-priced lawyers from the Los Angeles firm of O'Melveny & Myers, come as cross-complaints in a case brought against the state by the American Civil Liberties Union. The ACLU represents more than 100 poor and minority students who, like thousands of others, lack trained teachers, and sometimes have no regular teacher at all, have no books and are forced to attend school in rundown buildings - some with stopped and filthy toilets and/or unheated and often overcrowded classrooms -- that would be an embarrassment anywhere in the civilized world. The districts are those in which the ACLU's student plaintiffs go to school.

But Davis says that's not his problem, and he's sent his \$325-an-hour lawyers to drag those districts and lot of principals into court to prove it. Not that the state acknowledges the allegations of the students; it only says that if the allegations are true, the court should order the districts to correct things.

But of course, the cross-complaint effectively acknowledges the students' allegations. If they were unfounded, Davis' lawyers could easily prove it without suing the districts. In essence, the state is saying that that it's shocked, shocked, to learn that these terrible things are going on in California's public schools.

Is this the way our education governor intends to guarantee California's children an adequate education? Is it the state's position that every kid without a desk or a set of books or usable toilets has to find a lawyer, then file suit before he or she can get relief? (Interestingly enough, the cross-complaint doesn't blame the districts for the lack of credentialed teachers, suggesting that the state seems to be acknowledging its responsibility on that issue).

At one level, the state's legal strategy seems transparent; if it can get some court to order the districts to shape up - or better yet, get the districts, fearing devastating legal costs, to surrender and agree to some vague set of remedies - the governor could go back to court, declare the problem solved and have the case against the state dismissed.

At a more subtle level, this looks like fairly common corporate strategy - delay, run up the opponents' costs, sue some other party. John Daum, the lawyer who represents the governor, also represented Exxon in the Exxon Valdez oil spill case.

Early last year, the governor, defending his new centralized testing and accountability programs, was reported to have said that local control has been "an abject failure." Now the governor seems to be saying that when the onus threatens to fall on his doorstep, local control is great. Given the state's established constitutional responsibility for providing adequate K-12 education, the state now

appears to be exercising that responsibility by, in essence, suing itself.

If it's not settled soon, the cost - to the state and to the districts - is likely to run into the tens of millions of dollars, all of which could be far better spent on fixing up those classrooms, getting decent teachers into all classrooms and giving them the support they deserve.

Given the fact that some of the state's feistier urban superintendents, who have talked off and on about filing their own suit against what they believe is the state's failure to provide adequate resources to its urban districts, are now talking about filing a countercomplaint, the governor's scorched-earth strategy is even more counterproductive.

When the ACLU suit was filed, many state officials expected it to lead to negotiations and political, not court-imposed, solutions. In essence what the suit calls for is better state oversight of schools, especially those serving its poorest students. Given the costly bloodletting that the governor's legal response now threatens, it makes that course all the more imperative.

Which puts the initiative squarely (and literally) in the court of San Francisco Superior Court Judge Peter Busch, himself a Davis appointee, who's handling the case.

In November, Busch rejected Daum's motion contending that the ACLU was suing the wrong people because it was the districts, not the state, that are responsible for the conditions complained of.

"That the state has chosen to carry out certain of its obligations through local school districts," he ruled, "does not absolve the state of its ultimate responsibility."

He also seemed to anticipate the tactic that the governor is now using with his suits against the districts. "If the state does not have the legally required oversight and management systems in place, the same kind of problems would be prone to recur elsewhere."

To prevent that bloodletting, Busch could now use his authority to call in the parties in this case, and urge them to negotiate a settlement - which is what this suit is ultimately likely to lead to anyway.

It's the governor who's chosen to escalate this fight. If he continues to resist, it will at least be clear who would rather fight students asking for a decent education than create the oversight processes and accept the responsibility that he's trying to impose on everyone else.

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