

1 ABHAS HAJELA [SBN 173155]
RICHARD HAMILTON [SBN 037495]
2 JUDY CIAS [SBN 173556]
CALIFORNIA SCHOOL BOARDS ASSOCIATION
3 3100 Beacon Boulevard
West Sacramento, CA 95691
4 Telephone: 916/371-4691
Facsimile: 916/371-3407

5 LANCE H. OLSON [SBN 077634]
6 N. EUGENE HILL [SBN 32516]
OLSON, HAGEL & FISHBURN, LLP
7 555 Capitol Mall, Suite 1425
Sacramento, CA 95814
8 Telephone: 916/442-2952
Facsimile: 916/442-1280

9 *Attorneys for Intervenor*
10 CALIFORNIA SCHOOL BOARDS ASSOCIATION

11
12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO

14 ELIEZER WILLIAMS, et al.,

NO. 312236

15
16 Plaintiff(s),

17 vs.

18
19 STATE OF CALIFORNIA, et al.,

20
21 Defendant(s). /

HEARING: Sept. 17, 2003
TIME: 3:30 p.m.
DEPT: 20, Hall of Justice
JUDGE: Hon. Peter J. Busch

22
23 CALIFORNIA SCHOOL BOARDS
ASSOCIATION,

24
25 Intervenor. /

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1 The CALIFORNIA SCHOOL BOARDS ASSOCIATION, Intervenor, (CSBA) responds to
2 Plaintiffs's Motion for Summary Adjudication of the State's Duty to Ensure Equal Access to
3 Instructional Materials for All California's Public School Students, as follows:
4

5 INTRODUCTION

6 Plaintiffs seek summary adjudication of the State's duty "to operate an oversight system to
7 ensure equal access to instructional materials for all California public school students." Plaintiffs'
8 Motion for Summary Adjudication ("Motion") at 1. Plaintiffs' Motion must fail because the duty
9 they seek to impose on the State is incompatible with the controlling California authorities.

10 First, judicial decisions, including those cited by Plaintiffs, establish that the State has no
11 duty to ensure students equal access to instructional materials. The State's duty is to ensure
12 students access to public schools with basically equal educational programs. *Butt v. State of*
13 *California* (1992) 4 Cal. 4th 668, 685-686. While Plaintiffs allege facts that purport to show
14 unequal access to instructional materials among some public school students, they fail to allege
15 facts sufficient to show that any student is denied a basically equal educational program. For this
16 reason alone, Plaintiffs' motion must be denied.

17 Second, there is no authority for the proposition that the State has a duty to operate a
18 "system of oversight and management" focused on instructional materials. Such a duty does not
19 arise from enacted law or regulation or expressed provision of the California Constitution. Even
20 if Plaintiffs succeed in proving unconstitutional inequity in the State's school system, the State's
21 duty would be to take appropriate remedial action. The form of that action, if outside the
22 expressed authority of state officers or agencies, would be determined by the Legislature. *See, e.g.,*
23 *Seranno v. Priest* (1976) 18 Cal.3d 728, 748-750, 776; *Butt v. State, supra*, 4 Cal. 4th at 694-97;
24 *Tinsley v. Palo Alto Unified Sch. Dist.* (1979) 91 Cal. App. 3d 871, 910-11. Plaintiffs seek to
25 impose their preferred remedy of an effective "oversight and management system" by attempting to
26 convert that particular remedy into a substantive constitutional right and incorrectly asserting that
27 the State has a legal duty to provide that remedy. Further, Plaintiffs allege no facts that show that
28 reform of the State's oversight system for instructional materials will remedy the alleged

1 unconstitutional inequity, let alone facts that show that this is the only available remedy and is
2 therefore required as a matter of law.

3 Finally, Plaintiffs' Motion does not comply with the summary adjudication requirements of
4 Code of Civil Procedure 437c. CCP 437c(f)(1) permits summary adjudication of a duty owed by
5 a party in an action only if it "completely disposes" of that issue of duty. *See Regan Roofing Co.,*
6 *Inc v. Superior Court* (1994) 24 Cal. App. 4th 425, 435-36; *Linden Partners v. Wilshire Linden*
7 *Assocs.*, (1998) 62 Cal. App. 4th 508, 520. This Motion leaves unresolved the fundamental issue
8 of the State's duty to provide basically equal educational programs. The fact that Plaintiffs have
9 subsequently filed a motion for summary adjudication to ensure equal access to decent school
10 facilities essentially concedes this point. That motion also seeks to adjudicate the State's duty to
11 provide students with equal opportunities, and does so with respect to precisely the same cause of
12 action in the First Amended Complaint. Plaintiffs' FAC at 72. Clearly, the immediate Motion fails
13 to completely dispose of the issue of duty alleged in that cause of action.¹

14
15 **ARGUMENT**

16 **I. Plaintiffs' Motion Cannot Be Granted Because The Allegations Related To Unequal**
17 **Access To Instructional Materials Are Insufficient To Prove That A Constitutional**
Violation Has Occurred.

18 The State's duty with regard to providing students equal access to educational
19 opportunities is articulated by the California Supreme Court's decision in *Butt v. State of*
20 *California* (1992) 4 Cal. 4th 668. In *Butt*, the Court held that the California Constitution
21 guarantees basic equity in the educational programs provided to public school students, but
22 rejected the notion that this guarantee of basic equity could be parsed into numerous requirements
23 for equivalent access to educational services. *Id.* at 686-87. Plaintiffs' assertion of a State duty to
24 ensure all students equal access to textbooks, absent any allegations regarding the overall quality
25 of Plaintiff students' educational programs as compared to educational programs offered other
26

27 ¹ The Opposition filed by Intervenor LAUSD addresses in detail the salient issues raised by
28 Plaintiffs' failure to meet the requirements of CCP section 437(c). CSBA sees no need to elaborate on
those arguments and joins in those made by LAUSD.

1 students, is directly at odds with the decision in *Butt*.

2 In *Butt*, the Richmond Unified School District (“RUSD”) announced that it lacked funds to
3 complete the 1990-91 school term and would be forced to close all its schools six weeks early.

4 *Butt, supra*, 4 Cal. 4th at 673-74. District parents sued the State (and relevant state agencies and
5 officials) seeking intervention to keep the schools open, alleging that early closure of the schools
6 would constitute unlawful discrimination against District students and would violate the equal
7 protection guarantees of the California and United States Constitutions.² *Id.* The State countered
8 that it fulfilled its constitutional obligations for educational equality by providing equalized base
9 funding to all California school districts, and thus had no duty to intervene to keep RUSD schools
10 open. *Id.* at 679.

11 The Supreme Court rejected the State’s contention that its duty was limited to providing
12 equalized funding. Reviewing the leading cases construing equal protection guarantees in the
13 context of public education, the Court defined the State’s duty as follows:

14 [T]he California Constitution makes public education uniquely a fundamental
15 concern of the State and prohibits maintenance and operation of the common public
16 school system in a way which *denies basic educational equality* to the students of
17 particular districts. The State itself bears the ultimate authority and responsibility
18 to ensure that its district-based system of common schools *provides basic equality*
19 *of educational opportunity*.

20 *Butt, supra*, 4 Cal.4th at 685, emphasis added. The Court, however, also rejected the notion that
21 “basic educational equality” requires equivalent educational services in California public schools
22 – “[o]f course, the Constitution does not prohibit all disparities in educational quality or service.”
23 *Id.* at 686.

24 Recognizing the “inevitable variances” in educational philosophies, conditions and
25 opportunities in California’s “vast and diverse public school system,” the Court noted that

26 ² Unlike the situation before this Court, in *Butt* the length of the school year was controlled by
27 statute. (Ed. Code § 41420.) Thus, the standard for the school year was defined by the Legislature and all
28 school administrators and students have notice of that standard. There was no dispute in the *Butt* case
concerning the duty of school districts to keep the schools open for 175 days. All students in the state had
a right, and the State had a duty, to performance of that obligation. By closing the schools early, Richmond
students were not treated the same as all other students in the state and were denied equality in their
education opportunity when compared with all other students in the state. *Butt v. State, supra*, 4 Cal.4th at
686-687, and note 14. The facts submitted by Plaintiffs reveal no comparable circumstance - the
Legislature has not spoken to set any comparable standard as to access to instructional materials.

1 requiring strictly equal educational opportunities would “present an entirely unworkable
2 standard.” *Id.* Such a requirement is not only impractical, but is misguided given limited
3 resources and the vastly different needs of local communities and their public schools. A district
4 “might seek creative ways to gain maximum educational benefit from limited resources” and “[a]n
5 individual district’s efforts in this regard are entitled to considerable deference.” *Id.*

6 Thus, the Court held that educational disparities violate the equal protection clause only
7 when students are denied “an education basically equivalent to that provided elsewhere throughout
8 the State.” *Butt, supra*, 4 Cal.4th at 685-86. Specifically noting that a planned reduction of overall
9 term length could be compensated by a variety of other means, the Court further elaborated that:

10 Even unplanned truncation of the intended school term will not necessarily
11 constitute a denial of “basic” education equality. A finding of constitutional
12 disparity depends on the individual facts. ***Unless the actual quality of the
district’s program, viewed as a whole, falls fundamentally below prevailing
statewide standards, no constitutional violation occurs.***

13 *Id.* at 686-87, emphasis added.

14 Applying this standard and citing the “unprecedented circumstances of this case,” the
15 Supreme Court affirmed the trial court’s determination that the State had a constitutional duty to
16 intervene to keep RUSD schools open so that Richmond students had the same educational
17 opportunity afforded other students because of the statutory requirement that the school year
18 constituted 175 days of instruction. *Butt, supra*, 4 Cal.4th at 674, 680; 687. Two aspects of this
19 case were of particular significance to the Court. First, there was no dispute that the prevailing
20 standard for minimum length of the school term in California was 175 days, and that the
21 unexpected closure of RUSD schools six weeks early meant that 1990-91 school term for RUSD
22 students would be significantly truncated compared to the standard school term “provided
23 everywhere else in California.” *Id.* at 686-87; 687, fn. 14. Moreover, Plaintiffs submitted ample
24 evidence of “the serious disruptive effect the proposed closure would have upon the educational
25 process in the District and upon the quality of education afforded its students.” *Id.* at 675; 687-88;
26 687, fn. 16.

27 Nothing in *Butt* suggests that Plaintiffs can select a discreet component of an educational
28 program such as instructional materials (or facilities or teachers), and prove a constitutional

1 violation simply by showing disparities with regard to that component. The Supreme Court
2 specifically rejected such an approach noting that even as to the statutorily grounded minimum
3 school term, proof of deviation from that standard alone was insufficient to establish a
4 constitutional violation. *Butt, supra*, 4 Cal.4th at 686. While Plaintiffs allege disparities in access
5 to instructional materials,³ they fail to allege facts sufficient to prove that these disparities result in
6 fundamentally unequal educational programs in any schools or districts attended by Plaintiff class
7 members. Thus, under the standard articulated in *Butt*, Plaintiffs fail to allege the necessary facts
8 to establish a denial of equal protection of the laws or that the State has a duty of oversight
9 specifically directed to instructional materials.

10 For Plaintiffs to succeed its motion, the analysis set forth in *Butt* requires that they prove
11 that deprivations related to access to textbooks are not compensated by any other means (sharing,
12 photocopies, worksheets, after-school programs, etc.) and are so severe that students are denied
13 educational programs basically equal to the programs provided to all other students. Instead,
14 Plaintiffs allege: (1) that textbooks are fundamental and essential learning tools;⁴ (2) most students
15 have access to sufficient numbers of their own textbooks to use in class and at home;⁵ (3) a non-
16 trivial number of students do not have their own textbooks (in adequate condition) to use in class
17 and at home;⁶ and finally, (4) that the State has no system to ensure equal access to instructional
18

19 ³ While Plaintiffs' argue that the facts are undisputed, the scope and degree of these disparities are
20 vigorously disputed by school districts and the State. For example, see section II. C of LAUSD's
21 Opposition to Plaintiffs' Motion. The point here, however, is that even if every fact alleged by Plaintiffs in
22 their Motion is deemed established, those facts would be insufficient to establish a constitutional violation
23 pursuant to the principles established in *Butt*.

24 ⁴ See Separate Statement of Undisputed Facts in Support of Plaintiffs' Motion ("Plaintiffs'
25 Statement"), Undisputed Material Facts Nos. 2, 4 and 6. The assertion that textbooks are "fundamental" or
26 "essential" learning tools is relatively uncontroversial, but does not establish that discrepancies in access to
27 textbooks necessarily result in denial of basic educational equity. Therefore, such statements by themselves
28 do not relieve Plaintiffs of the burden to prove that students are denied basically equal educational
programs.

⁵ Plaintiffs' Statement, Undisputed Material Facts Nos. 7 and 8.

⁶ Plaintiffs' Statement, Undisputed Material Facts Nos. 9, 11, 12 and 13. With respect to the
second and third points, in contrast to *Butt* Plaintiffs do not clearly articulate a "prevailing statewide
standard" for access to instructional materials. The fact that no statute provides such a standard presents a
further complication for this Court. In *Butt*, the existence of a statute defining the prevailing statewide
standard related to length of the school term, while not dispositive, allowed the Court to measure the level of
discrepancy from that standard and provided some basis for determining the point at which disparities

1 materials.⁷

2 Even if these “material facts” are deemed established, Plaintiffs fail to state an equal
3 protection violation under the governing principles articulated in *Butt*. It is not necessary to
4 decide here whether or not Plaintiffs can make the showing required by *Butt* – that is an issue for
5 trial. CSBA would readily admit that a total denial of access to instructional materials equates to
6 denial of an adequate educational program. But the facts here, even if deemed undisputed, at best
7 show some students did not have their own textbooks to use in class and take home in a limited
8 number of courses for a limited period of time. See Plaintiffs’ Statement, Supporting Evidence
9 Nos. 11, 12 and 13.⁸ Recognizing that variances in educational quality and services are inevitable
10 in our vast and diverse public school system, the California Supreme Court requires a further
11 analysis to determine whether these variances in access to instructional materials result in
12 educational programs that, viewed as a whole, fall fundamentally below the statewide norm. *Butt*,
13 *supra*, 4 Cal. 4th at 686-687.

14
15 **II. California Law Imposes No Duty On The State To Operate A “System Of Oversight
16 And Management” Focused On Providing Equivalent Access To Instructional
17 Materials.**

18 The California Legislature has created a public school system where local school districts
19 are primarily responsible for the delivery of education, including for provision of adequate
20 instructional materials. As discussed above, pursuant to the Supreme Court’s decision in *Butt* the
21 State has a duty to ensure that students are provided basically equal educational programs, and
22 therefore a duty to intervene in the affairs of school districts if necessary to prevent denial of basic

23 become fundamental inequities. *See Butt*, 4 Cal. 4th at 687 (“District students faced the sudden loss of the
24 final six weeks, or almost one-fifth, of the standard school term . . .”). Plaintiffs make no effort to establish
25 a prevailing statewide standard for access to instructional materials other than to assert that most students
26 have “sufficient” access to instructional materials while a “non-trivial” number of students do not. Unlike
the statute before the court in *Butt*, such a standard is too vague to provide guidance for determining
whether specific instructional materials conditions fall fundamentally below the prevailing statewide standard
and deny students basically equal educational programs.

⁷ Plaintiffs’ Statement, Undisputed Material Fact No. 15.

⁸It may indeed be good public policy for the State to ensure equal access to instructional materials.
But the California Constitution leaves this matter to the discretion of the Legislature. Courts may intervene
only to prevent denial of basic educational equality. *Butt, supra*, 4 Cal.4th at 686-87.

1 educational equity. *Butt, supra*, 4 Cal. 4th at 681. Neither *Butt* nor any other authority cited by
2 Plaintiffs suggest a free-standing State duty of oversight and management focused on instructional
3 materials.

4 This Court has recognized that the State is not free to “manage the system in a way that
5 would deprive students of their right to equal protection of the laws or deprive them of
6 substantially equivalent educational opportunity.” Order Granting Motion For Judgment On The
7 Pleadings As To Second Cause of Action at p. 6 (July 10, 2003). Thus, if Plaintiffs’ were to
8 establish actual or imminent constitutional deprivations in California’s public schools⁹, as the
9 entity with “broad responsibility to ensure basic education equality” the State has a duty to take
10 appropriate remedial action to cure the defects in the school system that cause such deprivations.
11 *See Butt, supra*, 4 Cal. 4th at 681. The form of that action, if outside the expressed authority of
12 state officers or agencies, would be determined by the Legislature. (*See, e.g., Seranno v. Priest,*
13 *supra*, 18 Cal.3d at 748-750, 776; *Butt v. State, supra*, 4 Cal. 4th at 694-97; *Tinsley v. Palo Alto,*
14 *supra*, 91 Cal. App. 3d at 910-11. No state officer or agency presently has express authority to
15 oversee access to instructional materials in the manner contemplated by Plaintiffs, and neither
16 Plaintiffs nor this Court may direct the Legislature to implement that specific remedy. *Id.*

17 Further guidance on this issue of remedies is provided in *Butt*. The Court in *Butt* found
18 that the State had a duty to intervene to ensure the constitutional rights of students in the RUSD, but
19 afforded deference to “officials with specific responsibilities and expertise in education” to
20 fashion the appropriate remedy. *Butt, supra*, 4 Cal. 4th at 694-97. The Court was mindful that “[a]
21 court should always strive for the least disruptive remedy adequate to its legitimate task” and
22 specifically approved the trial court’s orders that defendants (the State, Superintendent of Public
23 Instruction and Controller) ensure the rights of District students “by whatever means they deem
24 appropriate.” *Id.* at 694-96. Even assuming Plaintiffs prove constitutional deprivations related to
25 instructional materials, imposing a specific State duty to reform the system of public school
26 oversight and management as a matter of law is entirely at odds with the careful and limited

27 _____
28 ⁹As discussed above, Plaintiffs fail to make such a showing here.

1 judicial intervention endorsed in *Butt*.

2 Plaintiffs offer no evidence that suggests that reform of the State's system of oversight and
3 management will cure any constitutional deprivations, let alone proof that the State has a duty to
4 implement this particular remedy as a matter of law. Absent further proof from Plaintiffs, the
5 State's only duty would be to intervene to correct alleged unconstitutional deprivations related to
6 instructional materials. Such intervention could take many forms, including (if such a standard
7 were established) providing sufficient funding to ensure that every student has their own textbook
8 in every core academic course.

9
10 **III. Plaintiffs' Motion Does Not Comply With The Requirements Of CCP 437c Because It**
11 **Fails To "Completely Dispose" Of Any Issue Of Duty Contained In The First**
12 **Amended Complaint.**

13 CCP 437c(f)(1) permits summary adjudication of a duty owed by a party in an action only
14 if it "completely disposes" of that issue of duty. *See Regan Roofing Co., Inc v. Superior Court*
15 (1994) 24 Cal. App. 4th 425, 435-36; *Linden Partners v. Wilshire Linden Assocs.*, (1998) 62 Cal.
16 App. 4th 508, 520. The immediate Motion seeks to adjudicate the State's duty to provide equal
17 access to a single discreet component of an educational program (instructional materials), and
18 leaves unresolved the fundamental issue of the State's duty to provide basically equal educational
19 programs. The fact that Plaintiffs have subsequently filed a motion for summary adjudication to
20 ensure equal access to decent school facilities essentially concedes this point.¹⁰ That motion also
21 seeks to adjudicate the State's duty to provide students with equal opportunities, and does so with
22 respect to precisely the same cause of action in the First Amended Complaint.¹¹ Plaintiffs' FAC at
23 72. Clearly, the immediate Motion fails to completely dispose of the issue of duty alleged in that
24 cause of action. The Opposition papers filed by Intervenor LAUSD address the salient
25 requirements CCP section 437(c) and how Plaintiffs fail to satisfy them. CSBA joins those
26 arguments.

27 ¹⁰That motion is now pending and is scheduled to be heard on October 24, 2003.

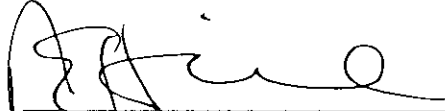
28 ¹¹ CCP 437c does not permit Plaintiffs to parse the duty related to a single cause of action into
multiple parts and seek summary adjudication as to each part.

1 CONCLUSION

2 For the reasons stated above, Plaintiffs' Motion for Summary Adjudication should be
3 denied.

4
5 Dated: 8/17 2003

OLSON, HAGEL & FISHBURN, LLP

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8 N. EUGENE HILL
9 *Attorney for Intervenor*
10 *California School Boards Association*

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