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15 LOS ANGELES UNIFIED SCHOOL DISTRICT
16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 CITY AND COUNTY OF SAN FRANCISCO

19
20 ELIEZER WILLIAMS, a minor, by Sweetie
Williams, his guardian ad litem, et al., each
21 individually and on behalf of all others
similarly situated,
22
Plaintiffs,
23
vs.
24
STATE OF CALIFORNIA, DELAINE
25 EASTIN, State Superintendent of Public
Instruction, STATE DEPARTMENT OF
26 EDUCATION, STATE BOARD OF
EDUCATION,
27
Defendants,
28

No. 312236
**INTERVENOR LOS ANGELES
UNIFIED SCHOOL DISTRICT'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION RE: PRECEDENCE OF
ISSUES FOR TRIAL CCP §§ 598,
1048**
Dept.: 20, Hall of Justice
Judge: Hon. Peter J. Busch
Hearing Date: September 17, 2003
Time: 3:30 p.m.
Trial Date: August 30, 2004

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LOS ANGELES UNIFIED SCHOOL
DISTRICT, SAN FRANCISCO UNIFIED
SCHOOL DISTRICT, LONG BEACH
UNIFIED SCHOOL DISTRICT, et al.,

Intervenors.

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3 Brown & Weil, Cal. Practice Guide: Civil Procedure
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3 Brown & Weil, Cal. Practice Guide: Civil Procedure
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1 I. INTRODUCTION.

2 The purpose of this motion is to obtain a dispositive ruling on the interpretation of
3 *Butt v. State of California*, 4 Cal. 4th 668 (1992), as it applies to this case. Although
4 Defendants and Plaintiffs have filed motions for summary adjudication, each motion is
5 plagued by procedural obstacles which impede the Court's ability to provide the guidance
6 the parties request.¹ The State has not renoticed the hearing on the Bathroom Motion, and
7 the Textbook Motion must be denied due to its inherent procedural defects and its reliance
8 upon disputed issues of fact. By this motion, LAUSD provides the Court with the vehicle
9 to formulate the issues for trial in light of *Butt* and to order the trial pursuant to California
10 Code of Civil Procedure ("CCP") §§ 598 and 1048.²

11 In its November 14, 2000 Order, the Court stated:

12 [T]his case will deal with the oversight and management systems the State
13 has in place to determine if they are legally adequate and whether they are
being properly implemented.

14 November 14, 2000 Order at 2:22-24. The Court also identified what is not at issue:

15 ¹ Defendants' Motion for Summary Adjudication of No Duty to Police or Monitor
16 Bathroom Maintenance (the "Bathroom Motion") was originally noticed for hearing on
17 November 1, 2002 and subsequently continued, and has not been renoticed for hearing.
18 Plaintiffs' Motion for Summary Adjudication of the State's Duty to Ensure Equal Access
19 to Instructional Materials for All California's Public School Students (the "Textbook
20 Motion") will be heard with this motion on September 17, 2003. Los Angeles Unified
School District ("LAUSD") is filing simultaneously its Opposition to the Textbook
21 Motion in which it demonstrates both the Textbook Motion's fatal procedural defects and
22 the disputed material facts. LAUSD respectfully suggests that the Court read LAUSD's
23 Opposition to the Textbook Motion before reading this brief, as we refer to sections of
24 that Opposition herein.

25 ² On May 22, 2003, LAUSD filed a Motion to Bifurcate and Order Proceedings (the
26 "Bifurcation Motion") which, like this motion, sought to provide the Court with the
27 means to decide the issues for trial. In response, Plaintiffs filed both an opposition and
28 the Textbook Motion in which they state their view of the issues in the case and the
evidence they seek to introduce in support of their burden. Memorandum of Points and
Authorities in Support of Plaintiffs' Opposition to Intervenor Los Angeles Unified School
District's Motion to Bifurcate and Order Proceedings ("Plaintiffs' Opposition") at 12-13.
LAUSD has requested that the Court take judicial notice pursuant to California Evidence
Code § 452(d) of Plaintiffs' Opposition. Intervenor Los Angeles Unified School
District's Request for Judicial Notice Pursuant to Cal. Evid. Code § 452 (filed
concurrently herewith). In an effort to respond to both Plaintiffs' and Defendants' views
of the case, provide an orderly framework for trial and focus more precisely on the issues
Plaintiffs seek to present, LAUSD has withdrawn the Bifurcation Motion and filed the
instant motion regarding precedence of issues for trial.

1 [T]his case is not about correcting the specific deficiencies suffered by these
2 students at their specific schools in their specific school districts . . . [T]his
3 case is exclusively about the State’s system of oversight and that system’s
4 alleged inadequacies and failures.

4 *Id.* at 2:5-6, 8-10.

5 To avoid the unnecessary expenditure of any party’s resources and to focus all of
6 the parties on the issues that the Court will try, LAUSD seeks the Court’s interpretation of
7 *Butt*—the controlling California Supreme Court authority—as it applies to this case, and an
8 order to establish the issues for trial.

9 Plaintiffs’ Opposition proffered their liability evidence and indicated it would be
10 “directed to three concrete showings:”

- 11 • First, plaintiffs will show that there are students at many California
12 public schools who suffer from conditions that deprive them of equal
13 educational opportunity. This showing will include evidence that the
14 deplorable conditions about which plaintiffs complain (including lack of
15 instructional materials, adequately trained teachers, and adequate
16 facilities) rise to a constitutionally significant dimension. The State
17 disputes that any of these conditions are constitutionally meaningful.
- 18 • Second, plaintiffs will introduce evidence demonstrating that the
19 State’s system of oversight and management is not capable of preventing
20 or discovering and correcting these conditions. The State disputes that it
21 has any duty to monitor or correct these conditions.
- 22 • Third, plaintiffs will show that there are steps the State could take to
23 institute a system of oversight and management that would remedy these
24 conditions now and in the future. This evidence will demonstrate that a
25 range of feasible remedies exists; but it will *not* necessarily define the
26 particular remedy that ultimately should be ordered here. Again, the
27 State disputes that there is anything it could do to improve these
28 conditions.

22 Plaintiffs’ Opposition at 12:18-13:6.

23 While LAUSD disputes that these “showings” would be sufficient by themselves to
24 establish the State’s liability, for the reasons discussed below, LAUSD submits that
25 Plaintiffs’ showings are most economically tried individually. Defendants would thus be
26 given the opportunity to present evidence on each of the three issues before the Plaintiffs
27 proceed to the next issue—a procedure anticipated by CCP §§ 598 and 1048. LAUSD’s
28 proposal effectuates the Court’s ruling that “the violation alleged in this case is limited to

1 the failure of the State’s system of oversight and management of public education.” Order
2 Granting Motion for Judgment on the Pleadings as to Second Cause of Action, dated July
3 10, 2003 (“July 10, 2003 Order”) at 4:8-9. Accordingly, the Court should receive evidence
4 from all parties on the State’s system of oversight and management before allowing
5 Plaintiffs to present their litany of students who claim deprivation of particular educational
6 resources. LAUSD suggests that the Court identify and order the issues for trial as follows:

- 7 1. Is the State’s system of oversight and management incapable of preventing
8 or discovering and correcting educational resource deprivations?
- 9 2. If so, are there students as to whom the actual quality of the educational
10 program, viewed as a whole, falls fundamentally below prevailing statewide
11 standards?
- 12 3. If so, are there “steps the State could take to institute a system of oversight
13 and management that would remedy these conditions now and in the
14 future?”

15 Regardless of whether the Court decides to order the trial as proposed by LAUSD,
16 Plaintiffs’ trial of alleged “deplorable conditions” must be refocused in light of *Butt*. To do
17 so, the Court must decide the following two questions:

- 18 1. Will the Court, in assessing whether students are being denied basic
19 educational equality, evaluate particular resources (such as textbooks) in
20 isolation, as Plaintiffs request, or the educational program as a whole, as *Butt*
21 requires?
- 22 2. Will the Court, in determining whether the actual quality of the educational
23 program, viewed as a whole, falls fundamentally below prevailing statewide
24 standards, evaluate the experience of individual students or an entire school
25 or school district?

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1 II. PLAINTIFFS' PROPOSED LIABILITY TRIAL SHOULD BE ORDERED IN
2 PHASES.

3 LAUSD's objective in filing the Bifurcation Motion was to provide the Court a
4 vehicle to inform the parties of its interpretation of applicable authority and to provide a
5 structure for trial which would inform pretrial discovery and preparation. Plaintiffs'
6 Opposition demonstrates the urgency of completing this analysis now because their
7 proposed showing of issues for trial reveals various unanswered questions and a focus
8 which conflicts with the Court's orders.

9 Ironically, in opposing LAUSD's Bifurcation Motion, Plaintiffs propose a
10 trifurcated liability phase. They identify three showings on related but separate sets of
11 issues and acknowledge that as to each the State takes an opposing view. Judicial economy
12 and logic argue for admitting all evidence on each of the issues, rather than allowing the
13 Plaintiffs to present evidence on all three showings at once.

14 First, Plaintiffs seek to introduce evidence of alleged educational deprivations which
15 they contend "rise to a constitutionally significant dimension," and anticipate that the "State
16 disputes that any of these conditions are constitutionally meaningful." Plaintiffs'
17 Opposition at 12:22-23. Assuming this description of the parties' case is accurate, judicial
18 economy argues for allowing the State and intervenors to introduce evidence on this issue
19 promptly after the Plaintiffs' presentation.

20 Plaintiffs' second "showing" is that the "State's system of oversight and
21 management is not capable of preventing or discovering and correcting these conditions."
22 *Id.* at 12:24-26. Again, they anticipate that the State will dispute their contention, and it is
23 more efficient for the State and intervenors to present their evidence on this issue in
24 response to Plaintiffs' presentation, rather than at the conclusion of the Plaintiffs' case-in-
25 chief.

26 Finally Plaintiffs propose to "show that there are steps the State could take to
27 institute a system of oversight and management that would remedy these conditions." *Id.*
28 at 13:1-2. This third phase of Plaintiffs' case would be meaningless unless the Court had

1 first heard, not only Plaintiffs', but also the State's evidence of the current system of
2 oversight and management.

3 LAUSD submits that this motion is timely as Plaintiffs' Opposition identifies the
4 elements of their case-in-chief. "A party seeking separate trials should seek such relief as
5 soon as the need becomes apparent." 3 Brown & Weil, Cal. Practice Guide: Civil
6 Procedure Before Trial (The Rutter Group 2002), § 12:420. Although motions to sequence
7 a trial are often brought on the eve of trial, the benefits of expediency and simplification
8 can be even greater if the decision to sequence the litigation is made at a much earlier stage.

9 Plaintiffs' offer of proof eloquently demonstrates the economies and efficiencies
10 which could be achieved by trying the issues separately pursuant to CCP §§ 598 and 1048.
11 Further, by defining the issues for trial and, in doing so, deciding the *Butt* issues, the Court
12 would both inform the ongoing extensive and expensive discovery and increase the
13 likelihood of settlement.

14 III. THE COURT SHOULD ORGANIZE AND FOCUS THE TRIAL CONSISTENT
15 WITH ITS RULINGS.

16 Plaintiffs propose to introduce evidence concerning the purported failure of the
17 State's oversight system second, but given the Court's rulings, the issue should be tried
18 first. The Court has made clear that the alleged denial of equal protection at issue in this
19 case "is limited to the failure of the State's system of oversight and management of public
20 education." July 10, 2003 Order at 4:8-9. Moreover, the Court has held that "this is not a
21 case to require any particular level, kind, or quality of teachers, facilities, or textbooks to be
22 provided to the Plaintiffs." *Id.* at 4:12-14. Given the case's "narrow focus on the state's
23 oversight and management of public education," *id.* at 4:15-16, and the fact that the most
24 time consuming phase of the trial will be Plaintiffs' proposed introduction of hundreds of
25 lay and expert witnesses on the issues of alleged educational resource deprivations in
26 California, judicial economy cries out for the introduction at the start of trial of evidence by
27 all parties that focuses directly on the existing system of oversight and management of
28 public education.

1 Consistent with this interpretation, the trial should address and decide the issues in
2 the following order:

3 (1) Is the State’s system of oversight and management incapable of preventing
4 or discovering and correcting educational resource deprivations?

5 (2) If so, are there students as to whom the actual quality of the educational
6 program, viewed as a whole, falls fundamentally below prevailing statewide
7 standards?

8 (3) If so, are there “steps the State could take to institute a system of oversight
9 and management that would remedy these conditions now and in the future?”

10 By this motion, LAUSD proposes that the Court try the three issues separately
11 pursuant to CCP § 598, admitting all evidence on one set of issues before proceeding to the
12 next. Were the Court to trifurcate the issues pursuant to CCP § 1048, and decide an issue at
13 the conclusion of the evidentiary presentation on that issue, further judicial economy may
14 be achieved. For example, a decision in favor of the State with respect to its “system of
15 oversight and management” could conclude the case. Alternatively, even if the Court were
16 to rule for Plaintiffs in phase one, the nature and scope of that ruling would inform the
17 second and third stages of Plaintiffs’ liability trial. Were the Court to conclude that one or
18 more aspects of the State’s oversight and management system are incapable of preventing
19 or discovering and correcting educational resource deprivation, it could direct the parties to
20 introduce evidence of school conditions directly related to those areas and narrow the trial’s
21 second phase accordingly.

22 In the third phase, Plaintiffs propose to “show that there are steps the State could
23 take to institute a system of oversight and management that would remedy these conditions
24 now and in the future.” Plaintiffs’ Opposition at 13:1-3. How could that trial proceed
25 efficiently unless the Court first identifies any defects in the current oversight and
26 management system and the educational resource deprivations it is incapable of addressing,
27 and then decides whether or not an equal protection violation has occurred.

28 Notwithstanding Plaintiffs’ confidence that they will prove “deplorable conditions” as to all

1 areas, the Court may well decide that the system functions as to one or more resources and
2 thereby avoid a trial in Plaintiffs' third phase of "feasible remedies" relating to that
3 resource.

4 A. The Court Has Discretion To Order That Any Issue Be Tried Before Any Other
5 Issue.

6 It is well within the discretion of this Court to sequence this trial. The trial court has
7 "broad discretion to determine the order of proof in the interests of judicial economy."
8 *Grappo v. Coventry Fin. Corp.*, 235 Cal. App. 3d 496, 504 (1991); *see also McLellan v.*
9 *McLellan*, 23 Cal. App. 3d 343, 353 (1972). A trial court may order that "the trial of any
10 issue . . . shall precede the trial of any other issue" when "the convenience of witnesses, the
11 ends of justice, or the economy and efficiency of handling the litigation would be promoted
12 thereby." CCP § 598. The statutory provisions for severance and separate trials are not
13 limited to separate trials of causes of action, but also separate trials of any issue. *American*
14 *Motorists Ins. Co. v. Superior Ct.*, 68 Cal. App. 4th 864, 872 (1998); *see also Walton v.*
15 *Walton*, 31 Cal. App. 4th 277, 292 (1995).

16 Trials are bifurcated to avoid wasting time and money. *Trickey v. Superior Ct.*, 252
17 Cal. App. 2d 650, 653 (1967); *accord Plaza Tulare v. Tradewell Stores, Inc.*, 207 Cal. App.
18 3d 522, 524 (1991). "The procedure is not limited to separate trials of liability and
19 damages; nor is it limited to dividing a case into only two parts. Indeed, 'trifurcation or
20 multifurcation' can be ordered." 3 Brown & Weil, Cal. Practice Guide: Civil Procedure
21 Before Trial, §§ 12:406-12:430. "The authority to sever issues for trial under Section 1048
22 may duplicate similar authority given under other statutes dealing with particular issues,
23 e.g., . . . [California Civil Procedure section] 598 (separate trial of issue of liability before
24 trial of other issues). These sections have been retained, however, because they include
25 useful procedural details which continue to apply." CCP § 1048 legislative comm.
26 comment (Deering 1996).

27 Bifurcation's main objective is "to expedite and simplify the presentation of
28 evidence." *Foreman & Clark Corp. v. Fallon*, 3 Cal. 3d 875, 888 (1971). Bifurcation is

1 therefore a useful and necessary tool for ordering and organizing the complex issues
2 currently before the Court. These purposes may be served even where a trial court finds
3 that some portion of the evidence relating to the later-decided issues would be necessary on
4 the preliminary issue. *Kaiser Steel Corp. v. Westinghouse Elec. Corp.*, 55 Cal. App. 3d
5 737, 746 (1976). The mere fact that a trial is bifurcated does not preclude consideration in
6 one phase of trial of evidence introduced during another phase. *Foreman & Clark Corp.*, 3
7 Cal. 3d at 889.

8 While the discovery taken to date represents a massive undertaking, the end of
9 discovery in this case remains distant. Given the breadth of the factual record Plaintiffs
10 intend to present, there is a significant benefit to clarifying the Court's interpretation of *Butt*
11 and sequencing the trial. This approach will organize the issues and evidence to be
12 presented at trial, thereby expediting the trial, simplifying the presentation of evidence,
13 streamlining the discovery process, and potentially saving the time associated with the
14 presentation of evidence at trial that is either overbroad or unnecessary.

15 B. The Court Should Try The State's Oversight And Management System First.

16 Plaintiffs and the Court identified the core issue—whether the State system of
17 oversight and management detects, prevents and corrects alleged educational deprivation.³
18 Logic compels introduction of all parties' evidence on the system as it exists at the start of
19 the trial, rather than allowing Plaintiffs to make all three proffered showings before hearing
20 the State's and Intervenors' evidence on the system. What are the roles of the various
21 agencies and officials who administer public education in California? What information do
22 they collect currently? To what extent are monitoring systems evaluating the resources
23

24 ³ In support of their motion for class certification, Plaintiffs argued that the common,
25 predominating factual questions were “*whether* the State has an existing system of
26 oversight and management for its public schools” and how that system works to detect,
27 prevent and correct the alleged deprivations. Plaintiffs' Memorandum of Points and
28 Authorities in Support of Class Certification at 21:16-20. This Court granted Plaintiffs'
motion for class certification, noting that “[t]he liability issue is whether there is a failure
on a state-wide level, not whether any particular individual has suffered, and individual
remedies are not sought.” October 1, 2001 Order at 2:6-7.

1 afforded to students? Where inequality is found, what remedies are employed? What data
2 is assembled by school districts and provided to State agencies? As this Court has
3 recognized, these questions are at the heart of the *Williams* case. July 10, 2003 Order
4 at 4:8-9, 12-16. It is only after receiving evidence on these issues from all parties that the
5 Court could evaluate any evidence of alleged educational inequality. While Plaintiffs
6 propose to begin their case-in-chief by introducing evidence of “deplorable conditions . . .
7 including lack of instructional materials, adequately trained teachers, and adequate
8 facilities,” Plaintiffs’ Opposition at 12:20-22, the Court stated:

9 Plaintiffs specifically eschewed a challenge based on the specific failings of
10 particular schools and districts to provide educational necessities, perhaps
11 recognizing the risk that such a suit might have had to give way, at least in
12 the first instance, to available administrative remedies. Thus, this is not a
13 case to require any particular level, kind, or quality of teachers, facilities, or
14 textbooks to be provided to the Plaintiffs. Nor does it address the level of
15 funding for education provided generally in the state or particularly for the
16 Plaintiffs.

17 July 10, 2003 Order at 4:9-15. Given “the narrow focus on the state’s oversight and
18 management of public education,” *id.* at 4:15-16, Plaintiffs’ proffered first showing would
19 be misplaced until the Court was fully informed by all parties of the State’s system of
20 oversight and management.

21 **IV. PLAINTIFFS’ TRIAL OF ALLEGED “DEPLORABLE CONDITIONS” MUST**
22 **BE REFOCUSSED IN LIGHT OF BUTT.**

23 Regardless of the order in which the Court decides to try this case, Plaintiffs’ trial of
24 alleged “deplorable conditions” must be refocused in light of *Butt*. In particular, they omit
25 two issues from their showing:

26 **1) Will the Court, in assessing whether students are being denied basic**
27 **educational equality, evaluate particular resources (such as textbooks) in isolation, as**
28 **Plaintiffs request, or the educational program as a whole, as *Butt* requires?**

Whether or not the Court orders the trial as LAUSD proposes, the Court should
decide that in their trial of the alleged “deplorable conditions,” the parties must submit
evidence of “the actual quality of . . . [the educational] program, *viewed as a whole*,” and

1 that educational resources will not be viewed in isolation. *Butt*, 4 Cal. 4th at 686-87
2 (emphasis added). The Textbook Motion contends that the Court may evaluate the State's
3 system of oversight with respect to individual educational resources, such as instructional
4 materials, in isolation, and decide whether allegations of deprivation as to that particular
5 resource impose a duty at the state-level to remedy the alleged deficiencies in the State's
6 oversight and management system. Contrary to Plaintiffs' claim, *Butt*, other authorities and
7 logic require that the Court consider "the actual quality of . . . [an educational] program,
8 viewed as a whole." *Id.* See also Opposition by Intervenor Los Angeles Unified School
9 District to Plaintiffs' Motion for Summary Adjudication of the State's Duty to Ensure
10 Access to Instructional Materials ("LAUSD's Opposition") at 4:8-14; 7:14-8:2; 15:14-19.
11 In its consideration of the Textbook Motion, were the Court to conclude, as *Butt* requires,
12 that instructional materials must be evaluated in the context of an entire educational
13 program, the Court would presumably deny the Textbook Motion. While the Court's ruling
14 would be instructive, by granting LAUSD's motion the Court could decide the issue to be
15 tried. Accordingly, the Court should order that the second issue for trial is: are there
16 students as to whom the actual quality of the educational program, *viewed as a whole*, falls
17 fundamentally below prevailing statewide standards?

18 **2) Will the Court, in determining whether the actual quality of the educational**
19 **program, viewed as a whole, falls fundamentally below prevailing statewide**
20 **standards, evaluate the experience of individual students or an entire school or school**
21 **district?**

22 In the First Amended Complaint, Plaintiffs offer anecdotal examples of students
23 who state that they did not receive a particular educational resource, and in the Textbook
24 Motion, they focus on instructional materials. Plaintiffs' complaint and class allegations
25 contend that students are entitled to both a textbook for each core subject "(1) to use in
26 class without sharing with another student;" and "(2) to use at home each evening for
27 homework." Plaintiffs' Class Definition. They allege that failing to achieve this level of
28 entitlement constitutes a violation of educational equality and qualifies the student for

1 membership in the Plaintiff class. They claim that the allegation of textbook deprivation
2 can be viewed out of the context of the program of the school they attend and without
3 regard to the local district's resource allocation decisions. *Butt* considered "the actual
4 quality of the district's program," acknowledged the "inevitable variances in local
5 programs," and afforded "considerable deference" to an individual district's programs.
6 *Butt*, 4 Cal. 4th at 686-87. *See also* LAUSD's Opposition at 15:5-13. In order to apply the
7 *Butt* standard, the Court cannot look at individual students in isolation; they must be
8 considered in the context of their entire school experience. Failure to do so would ignore
9 the "inevitable variances in local programs, philosophies, and conditions." *Butt*, 4 Cal. 4th
10 at 686.

11 For purposes of analyzing Plaintiffs' claims in this lawsuit, it would not be
12 sufficient, nor consistent with the *Butt* court's analysis, to examine in isolation a student's
13 individualized experience with respect to the particular resources at issue.⁴ Rather, the
14 Court must evaluate the educational program as a whole for the school and districts which
15 the student attends. This is the approach that the Court adopted in *Butt*, where the Court
16 expressly rejected plaintiffs' claim that the mere failure of the Richmond Unified School
17 District to provide 175 days of education was sufficient to require State intervention. The
18 Court allowed for the possibility that districts could develop a system to address their
19 particular circumstances:

20 [T]he California Constitution does not guarantee uniformity of term length
21 for its own sake. While the current statutory scheme for allocating State
22 educational funds strongly encourages a term of at least 175 days, that

23 ⁴ It is crucial to recognize, as the Court did in its November 2000 and July 10, 2003 Orders,
24 that Plaintiffs here are not pursuing their individual claims and seeking redress for those
25 claims. Instead, the question is whether there is a systemic failure. As the Court noted in
26 its November 2000 Order, if individual claims were at issue, "many of the kinds of
27 problems alleged might well be amenable to resolution through existing administrative
28 procedures." November 14, 2000 Order at 2:6-8. The Uniform Complaint Procedure
provides for complaints about district violations to be addressed by the district, with
appeal to the Superintendent of Public Instruction. Cal. Code Regs. tit. 5, §§ 4631, 4652.
In some circumstances, complaints may be made directly to the Superintendent of Public
Instruction. *Id.* at § 4650.

1 system is not constitutionally based and is subject to change. In an uncertain
2 future, local districts, faced with mounting fiscal pressures, may be forced to
3 seek creative ways to gain maximum educational benefit from limited
4 resources. In such circumstances, a planned reduction of overall term length
5 might be compensated by other means, such as extended daily hours, more
6 intensive lesson plans, summer sessions, volunteer programs, and the like.
7 An individual district's efforts in this regard are entitled to considerable
8 deference.

9 *Id.* (internal references omitted).

10 Allowing for this type of flexibility in evaluating each district's programs is
11 essential to the proper application of *Butt* to Plaintiffs' claims. LAUSD's Opposition
12 at 1:17-20; 7:18-8:2; 15:7-13. In trying the alleged "deplorable conditions," the Court
13 should assess pedagogical decisions in the context of the school or district in which they
14 were made, and thereby accord "an individual district's efforts" the "considerable
15 deference" to which they are entitled. *Butt*, 4 Cal. 4th at 686. The Textbook Motion
16 highlights Plaintiffs' misguided view that, if there are students in a school who do not have
17 a textbook to bring home, a constitutional violation has occurred, and the Court should
18 make this judgment without inquiring whether the school or district had a principled basis
19 for the situation. If an English teacher were to decide that the most effective way to teach
20 *Julius Caesar* to inner city high school students is for them to read it aloud and, based upon
21 her experience, giving the students the books to take home would result in a high
22 percentage of books left home and unavailable for use in class, Plaintiffs would claim an
23 equal protection violation. If confronted with book loss rates of 30%, and "faced with
24 mounting fiscal pressures," districts were "to seek creative ways to gain maximum
25 educational benefit from limited resources" by purchasing class sets, rather than copies to
26 bring home, Plaintiffs would mount a constitutional attack. *Id.* Regardless of the Court's
27 ultimate decision of the issue, the California Supreme Court's holding requires that the
28 matter be evaluated in the context of the school or district and not by isolated examples. In
granting LAUSD's motion, the Court should order that, in determining whether the actual
quality of the educational program, viewed as a whole, falls fundamentally below

1 prevailing statewide standard, the Court will evaluate an entire school or school district, and
2 not the experience of individual students. Deciding this issue now is essential to inform
3 ongoing discovery, to insure an orderly trial and to maximize the possibility of settlement.

4 V. CONCLUSION.

5 For the foregoing reasons, the Court should grant the motion re: precedence of
6 issues for trial and order that the trial will proceed as follows:

7 (1) Is the State’s system of oversight and management incapable of preventing
8 or discovering and correcting educational resource deprivations?

9 (2) If so, are there students as to whom the actual quality of the educational
10 program, viewed as a whole, falls fundamentally below prevailing statewide standards?

11 (3) If so, are there “steps the State could take to institute a system of oversight
12 and management that would remedy these conditions now and in the future?”

13 Further, as to the second phase of the trial, the Court should order that:

14 (1) In assessing whether students are being denied basic educational equality,
15 the Court will evaluate *the educational program as a whole*, as *Butt* requires, as opposed to
16 particular resources (such as textbooks) in isolation, as Plaintiffs request; and

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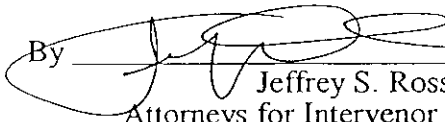
1 (2) In determining whether the actual quality of the educational program,
2 viewed as a whole, falls fundamentally below prevailing statewide standards, the Court will
3 evaluate *an entire school or school district*, and not the experience of individual students.

4 Dated: August 21, 2003.

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