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ENDORSED
FILED
San Francisco County Superior Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ELIEZER WILLIAMS, a minor, by Sweetie Williams, his guardian ad litem, *et al.*, each individually and on behalf of all others similarly situated,

Plaintiffs,

v.

STATE OF CALIFORNIA, DELAINE EASTIN, State Superintendent of Public Instruction, STATE DEPARTMENT OF EDUCATION, STATE BOARD OF EDUCATION,

Defendants.

No. 312236

[CLASS ACTION]

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' DEMURRER

Hearing Date: October 30, 2000
Department: 16, Hall of Justice
Judge: Hon. Peter J. Busch

Date Action Filed: May 17, 2000

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND REGULATIONS

I. INTRODUCTION

This case takes dead aim at the deplorable conditions that tens of thousands of California's schoolchildren must daily endure, conditions that cannot but shock the collective conscience of the citizens of our State. In its special demurrer, the State strikes a pose of utter befuddlement as to what legal obligation it owes these children, and how it has failed to satisfy that obligation, while conceding, in some respects, that many schoolchildren lack the bare essentials of an education. The First Amended Complaint is explicit and detailed on these matters. The Court should, therefore, deny the State's special demurrer and allow the case to proceed expeditiously so all public school children can have access at least to the basic tools and conditions they require to learn.

The First Amended Complaint[1] spells out in no uncertain terms the systemic deficiencies in California's common system of education for which plaintiffs seek a classwide remedy. The complaint repeatedly alleges that plaintiffs, in contrast to the majority of students throughout California, are compelled to attend schools where they lack textbooks and permanent teachers or teachers prepared to teach the content required to satisfy State mandates for grade promotion or graduation; schools where schoolchildren are assigned to classrooms without seats, that are infested with rats and other vermin, and in which the temperature is so hot or so cold on a persistent basis as to impede the ability to learn. The complaint also alleges that the students to whom the State primarily denies these essential educational tools and conditions are students of color[2] and low-income students. And the complaint repeatedly alleges that the State is responsible to monitor and repair these conditions and that nonetheless they persist. The only

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[1] The State demurred in response to our First Amended Complaint, and the State agencies joined the State's demurrer. Despite this joinder, in the text we refer to the State's demurrer. We refer to the First Amended Complaint in the text simply as the complaint, and we cite it as "FAC."

[2] Plaintiffs note that, on the first page of the memorandum of points and authorities in support of the demurrer, the State purports to criticize the complaint for referring to "minority" children and then, in footnote 1, questions the concept of "minority" status. Whatever the State's real point here, the word "minority" never appears in plaintiffs' complaint.

issues, then, that in fact need clarifying are how and when the State and State agencies will ensure that no child goes without books or a teacher or the other basic necessities of education.

The set of conditions alleged in the complaint violate plaintiffs' individual rights under five state and federal laws: (1) the Equal Protection Clause of the California Constitution; (2) Article IX sections 1 and 5 of the California Constitution; (3) the Due Process Clause of the California Constitution; (4) Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and its implementing regulations; and (5) Education Code § 51004. Although the demurrer is not a model of clarity, defendants present arguments as to purported uncertainty on only one of plaintiffs' causes of action, the equal protection claim under *Butt v. State of California* (1992) 4 Cal.4th 668.[3]

Moreover, although defendants affect confusion as to the State's legal obligations to school children, their papers include long lists of statutes and programs that they say satisfy those obligations. These matters outside the pleadings are, of course, procedurally extraneous to the demurrer. More important: beyond being gratuitous, the State contradicts its posture of uncertainty about what we contend by including a raft of examples related to textbooks, qualified teachers, and decent facilities.

It has long been recognized that education is a fundamental personal right within our constitutional scheme "which [lies] at the core of our free and representative government" (*Serrano v. Priest* (1976) 18 Cal.3d 728, 767-768 [*Serrano II*]), precisely because "the public schools of this state are the bright hope for entry of the poor and oppressed into the mainstream of American society." (*Serrano v. Priest* (1971) 5 Cal.3d 584, 609 [*Serrano I*].) Our Constitution vests "'plenary' power over education in the State," and with that authority comes "ultimate responsibility for equal operation of the common school system." (*Butt, supra*, 4

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[3] Because the State's Memorandum of Points and Authorities in support of the Demurrer (Cited as "Dem. MPA") only discusses plaintiffs' equal protection claim, plaintiffs address only that claim in text, without conceding that any of the causes of action lacks clarity. To aid this Court's review, however, plaintiffs point to paragraphs 1, 2, 11, 13, 91, 143, 161, 187, 233, 277, 281, and 307 of the complaint, which clearly set out facts and legal claims in support of each of the other causes of action in the complaint.

Cal.4th at p. 688, 692.) The State therefore must "provide 'equal educational opportunity to the youth of the state' and 'has a duty to intervene to prevent unconstitutional discrimination' in its schools." (*Id.* at pp. 684-685 [quoting *Tinsley v. Palo Alto Unified School Dist.* (1979) 91 Cal.App.3d 871, 903-904].)

At bottom, what is most notable about the State's demurrer is not that it has validity, which it does not, but the breadth of its concessions, which both confirm the clarity of the complaint and set the case up for narrow review only of issues the parties genuinely dispute. At the same time that the State declares that it cannot "glean[]" from the complaint what "issues [the State] must actually meet" (Dem. MPA at p. 6), the State concedes the need for redress of many of the allegations plaintiffs raise. For example, "the State agrees with plaintiffs that every student in every public school should have a textbook" (Dem. MPA at p. 14), notwithstanding plaintiffs' numerous allegations that many of them do not have textbooks in their classes. By agreeing, the State concedes both that textbooks are an indispensable tool of learning and that defendant officials do not now ensure that all California public school children receive the instructional materials they need. In addition, the charge that plaintiffs must have filed this action against the State because "[t]hey wanted to make allegations without subjecting their contentions to challenge by persons actually knowledgeable about the facts" (Dem. MPA at p. 23) concedes that no one at the State level monitors the conditions identified. The State's assertion that it has "accordingly enacted remedial and corrective measures" to provide teachers qualified to instruct required curriculum (Dem. MPA at pp. 9-10) implicitly concedes that the absence of a core of trained teachers in every school and a permanent teacher in every classroom causes real and substantial harm to plaintiff students' right to education. Finally, the State's absolute silence with respect to other conditions described, including classroom temperatures and noise and size standards and seating, suggests the State's ignorance of the full nature and extent of the deprivations its common school system works on plaintiff public school children.

Instead of demonstrating any lack of clarity in plaintiffs' complaint, these concessions and loud silences reveal the fundamental rights at stake in this case and frame tightly the issues

this Court will have to review in response to plaintiffs' complaint. In the face of plaintiffs' allegations and the State's revealing responses, this Court should deny the State's demurrer so defendants will not be permitted to throw up their hands and pose the rhetorical question "what do you expect us to do about it?," while the most elementary needs of California's school children continue to go unmet. Because the complaint makes clear the State's duty as well as its failure to perform that duty, there is no reason to delay this case by ordering plaintiffs to clarify an already crystalline complaint or undergo an administrative process that cannot address plaintiffs' injuries.

II. PLAINTIFFS' COMPLAINT IS SUFFICIENTLY SPECIFIC.

A. Plaintiffs' Complaint Far Exceeds the Standard for Special Demurrer.

The State's assertion that "plaintiffs' complaint nowhere specifies plaintiffs' real grievances" and that "[a]ccordingly the State has no way of gleaning from plaintiffs' complaint the issues it must actually meet" (Dem. MPA at p. 6) is preposterous. The complaint more than sufficiently apprises the State of the issues at stake: "All that is required of a complaint, even as against a special demurrer, is that it set forth the essential facts of plaintiff's case with reasonable precision and with particularity sufficiently specific to acquaint defendant of the nature, source, and extent of the cause of action." (*Gressley v. Williams* (1961) 193 Cal.App.2d 636, 643-644.)[4] Plaintiffs have satisfied, and indeed far exceeded, this standard with respect to each of the causes of action in the complaint. As we demonstrate below, plaintiffs specified each basic educational necessity denied, explained why absence of the learning tools identified or the conditions enumerated deprives them of equal and essential educational opportunities, and spelled out the State's legal responsibility to ensure basic educational opportunity by providing these tools and correcting these conditions. These explanations leave no reasonable doubt as to either what is

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[4] See also *Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 30 ["The complaint need only apprise the defendant reasonably of the nature, source, and extent of plaintiff's claim."]; *Smith v. Kern County Land Co.* (1958) 51 Cal.2d 205, 209; *Goldstein v. Healy* (1927) 187 Cal. 206, 210; *Gonzales v. State* (1977) 68 Cal.App.3d 621, 631 ["A special demurrer should not be sustained if the allegations are sufficiently clear to apprise the defendant of the issues that must be met, even if the allegations of the complaint may not be as clear and as detailed as might be desired."] [internal quotation omitted].

meant by any of the facts alleged, or the factual or legal issues to which the State must respond. (See *Gonzales v. California* (1977) 68 Cal.App.3d 621, 634 [noting that special demurrers apply to "matters . . . creating a doubt as to what the pleader means by the facts alleged"].)

The State asserts its main confusion over the precise form of remedies sought by the complaint. (See, e.g., Dem. MPA at pp. 4, 5, 13, 15, 27.) But defendants cite no case requiring plaintiffs at the complaint stage to articulate exact remedies, nor have we found any such case. The decision defendants rely on at page 5 of their memorandum, *Merlino v. West Coast Macaroni Manufacturing Company* (1949) 90 Cal.App.2d 106, 108, holds no differently from the cases we cite listing "all that is required in a complaint."[5]

The State's extraction of the phrase "uncertainty rampant" from the decision in *Hills Transportation Company v. Southwest Forest Industries, Inc.* (1968) 266 Cal.App.2d 702, does not assist its argument. (Dem. MPA at pp. 12-13, 15.) The court in *Hills Transportation Company* reviewed a breach-of-contract complaint that failed to allege the length of time during which the parties intended the contract to be effective, referring only to a "reasonable time" as the contract's effective duration. (266 Cal.App.2d at p. 206.) The issue on demurrer had nothing whatsoever to do with relief sought, and the court correctly held that "the complaint is uncertain about the duration of the contract" because the court had no objective arbiter of what could constitute a "reasonable time" and the complaint stated no particular time period. (*Ibid.*) Without this specification, the defendants could not answer and the court obviously could not adjudicate whether or not the contract had been breached.

No such uncertainty exists here either as to plaintiffs' allegations, for example, that "[t]hese appalling conditions in California public schools represent extreme departures from accepted educational standards" (FAC ¶ 1) or that "[t]he deplorable conditions at the schools the

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[5] Notwithstanding the absence of any legal compulsion, our complaint is hardly silent on the subject of what the State must generally do to meet its obligation of ensuring the delivery of basic educational opportunities for every child in California. As reviewed below, plaintiffs explain in detail that a constitutionally sufficient system of accountability requires defendants to establish minimal standards for the provision of the enumerated basic learning tools, and then to monitor and enforce compliance effectively. (FAC ¶¶ 293-97.)

student plaintiffs must attend fall fundamentally below even baseline standards for education." (FAC ¶ 4.) The State avows with respect to these and similar allegations that it is at a loss to understand "[w]hat is an 'adequate minimal standard'" (Dem. MPA at p. 13), but the complaint leaves no doubt as to the adequate minimal standards the State must ensure. First, plaintiff children must have the same basic tools of education and learning conditions available to the majority of public school children in California. Second, adequate minimal standards would ensure the existence of classrooms that students do not have to share with rats and other vermin, in which there is sufficient heating or air conditioning so that students neither swelter in 90-degree temperatures nor wear jackets and gloves to keep warm, and that have seats for every child, and would ensure the provision of schools with textbooks for every child, functioning toilets, and teachers trained to educate students in required curriculum. Thus, far from the situation in *Hills Transportation Company* where the defendant had to guess how it breached the contract under plaintiff's claim, here we plainly allege that adequate minimal standards at the very least require plaintiff children to have the same basic tools of education and learning conditions available to the majority of public school children in California, and that children go to schools that meet basic health and safety standards, where they receive basic instructional materials, and where they have a core of trained teachers.

B. The Complaint Alleges in Detail the Flawed Conditions Under Which Plaintiff School Children Try to Learn.

The State's blithe reference to "problems" in California schools—some of which the State characterizes as "trivial"—that cannot be repaired through use of a "magic wand" suggests that the conditions plaintiff school children suffer do not and could not rise to the level of a constitutional violation. (Dem. MPA at pp. 3-4.) The State is wrong. The complaint clearly articulates both generally and by detailed illustrative example the ways in which the educational deprivations school children suffer violate their constitutional rights to education, to equal access to education, and to due process, as well as their statutory rights to protection from discrimination on the basis of race, color, national origin, or economic status. In addition to enumerating the specific deprivations plaintiff school children suffer at paragraph 65 of the

complaint, the complaint details through specific examples each basic necessity the State systematically denies to these school children and explains that "[t]hese appalling conditions in California public schools represent extreme departures from accepted educational standards and yet they have persisted and worsened over time. Students who are forced to attend schools with these conditions are deprived of essential educational opportunities to learn." (FAC ¶ 1.)

1. The Complaint Clearly Alleges Inadequate Access to Books and Instructional Materials.

The complaint alleges generally that thousands of California public school children "lack textbooks in core academic subjects." (FAC ¶ 8.) Plaintiffs supplement this general allegation with such detailed examples as that "[s]ome students have never taken a book home for homework in as many as three years of attending high school" (FAC ¶ 87) and that at least "[o]ne algebra class has no books at all—not even books for students to use in class. The students must use class time to copy problems into their notebooks from the blackboard. And students must rely on notes they took in class for instruction on how to do their math problems because they have no books anywhere to which they can refer for clarification." (FAC ¶ 98; see also ¶¶ 79, 94, 104, 108, 113, 130, 135, 138, 141, 142, 144, 149, 156, 163, 165, 170, 175, 176, 180, 182, 192, 203, 209, 213, 218, 230, 242, 248, 250, 257, 259, 263.)

2. The Complaint Alleges in Detail the Lack of Trained and Permanent Teachers.

Plaintiffs again clearly allege, both generally and by way of detailed examples, that children are consigned to classrooms taught by successions of substitute teachers or by teachers who do not have even the most minimal training. Plaintiffs explain:

> Many California public school students are taught by persons who, however motivated or well-meaning, have received not so much as one hour of instruction in how to teach children. The State permits districts to hire and place in classrooms unlimited numbers of persons who have only emergency teaching permits, signifying nothing more than that they have graduated from college and passed a written test unrelated to their teaching effectiveness.

(FAC ¶ 9.) Plaintiffs supplement this clear allegation with detailed examples, as follows: "[I]n at least 100 California public schools, fewer than half of the teachers have full, nonemergency teaching credentials." (FAC ¶ 275.) In some class representatives' schools, the number is even

more appalling: "At Edison-McNair, 75 percent of the teachers lack full, nonemergency teaching credentials. In addition, 70 percent of the students who attend Edison-McNair are still learning the English language, so these students have special educational needs for which teachers require, but do not have, additional training." (FAC ¶ 136; see also ¶¶ 84, 86, 101, 103, 120, 124, 129, 137, 171, 244, 253, 258, 260, 268.)

And the complaint states that many children learn in classes where they "have no permanent teacher but instead are taught by a series of substitute teachers. Students in these classes often have different substitute teachers every day, and some of the substitute teachers are not familiar with the subject matter they attempt to teach." (FAC ¶ 85.) "Virgil Middle School has approximately 23 unfilled teacher vacancies for the 2000-2001 school year, which is currently in session." (FAC ¶ 198.) "Students in many classes at Kennedy—including advanced-placement physics, advanced-placement English, geometry, and algebra—have not had a formal, long-term teacher for the entire year. Instead, students in these classes have studied under a series of substitutes, some of whom stayed for periods as short as one day." (FAC ¶ 102; see also ¶¶ 105, 114, 179, 193, 198, 212, 221, 228, 245.) "In one Spanish class during the 1999-2000 school year, a student who transferred to Balboa from another school attempted to instruct the class in Spanish on some days because the limited Spanish she had learned at her previous school exceeded the Spanish instruction the students otherwise received from untrained and short-term substitute teachers." (FAC ¶ 85.)

3. The Complaint Alleges the Problems Caused by Decrepit and Overcrowded Facilities.

The complaint makes clear, again generally and by way of specific example, the decrepit and unsanitary facilities in which the State forces children to learn. (See generally FAC ¶¶ 11-12.) The complaint notes examples of the many schools that are "infested with vermin and roaches and [where] students routinely see mice in their classrooms." (FAC ¶ 80; see also ¶¶ 89, 112, 177, 184, 191, 207, 211, 226, 241, 246.) The complaint shows that some classrooms have "mushrooms and fungus growing inside" (FAC ¶ 160), and that in many schools "the school roof leaks in the rain." (FAC ¶ 99; see also ¶¶ 118, 128, 155, 205.) The complaint demonstrates that

in some schools, "buildings are in such severe disrepair that some classroom doors do not have knobs and wires hang from the ceilings in some classrooms." (FAC ¶ 265.) Many children go to school where "[c]eiling tiles are missing and cracked in the school gym, and school children are afraid to play basketball and other games in the gym because they worry that more ceiling tiles will fall on them during their games." (FAC ¶ 82; see also ¶¶ 99, 159, 166, 189, 197, 205.)

The complaint shows that students in many California schools "have urinated or defecated on themselves at school because they could not get into an unlocked bathroom" (FAC ¶ 81) and that when students can access bathrooms, the schools provide as few as "only one stall for approximately every 80 girls and approximately every 80 boys." (FAC ¶ 158; see also ¶¶ 92, 100, 109, 117, 132, 148, 150, 158, 167, 172, 181, 183, 188, 196, 214, 224, 236, 249, 252, 261.) These bathrooms generally are "filthy and students are reluctant to use them. Students must choose: concentrate on their bladders instead of their studies or face health risks by using school restrooms." (FAC ¶ 164; see also ¶¶ 92, 100, 214, 264.)

The complaint states that children must take instruction in such extremely hot classrooms that their "[t]eachers have to spray students with water to keep them cool." (FAC ¶ 96; see also ¶¶ 83, 96, 110, 116, 119, 126, 133, 139, 140, 154, 162, 168, 216, 225.) The heat becomes so severe that "[f]or one third of the school year, classroom temperatures in the rooms without air conditioning become extremely hot, reaching as high as 110 degrees." (FAC ¶ 162.) And in winter, children in some classrooms must "wear coats, hats, and gloves during class to keep warm." (FAC ¶ 83; see also ¶¶ 96, 154, 215.)

The complaint demonstrates that "[s]ome classes have as many as 65 students with only 30 seats for weeks at a time." (FAC ¶ 107; see also ¶¶ 88, 107, 145, 186, 208, 210, 219, 227, 254.) Other students do not have classrooms at all, but have instead taken instruction in such makeshift spaces as an "auditorium stage, while music lessons—complete with trumpets, clarinets, flutes, and violins—or school assemblies or other noisy activities took place simultaneously in the same auditorium." (FAC ¶ 127; see also ¶¶ 125, 146, 157, 262.) Some students cannot hear their teachers because their schools lack any, or adequate, sound barriers

between classes and classrooms. (FAC ¶¶ 93, 131, 134.) At some schools, "no full walls divide as many as six classrooms from each other. Instead of walls, the school uses bookshelves that reach approximately five or six feet high underneath a nine- or ten-foot ceiling, allowing sound to travel over the shelves into other classrooms." (FAC ¶ 131.)

The complaint explains that at some schools, "overcrowding is so severe that the school has resorted to a three-track schedule for student attendance, such that two tracks of students attend school at any given time. The multitrack scheduling means that no school time exists when the school is vacant, so it is difficult and sometimes impossible for the school to perform maintenance and repair without impeding children's education." (FAC ¶ 169; see also ¶¶ 190, 200, 206, 222, 234, 239, 243, 266, 269, 274.) Overcrowding requires some schools to bus children long distances out of their neighborhoods. For example, Cahuenga Elementary School "houses approximately 1297 students, but another 1300 elementary school children are bussed to schools in other neighborhoods every day because Cahuenga has no room for them." (FAC ¶ 169; see also ¶ 200.) In addition, overcrowding at some schools is so severe that "students cannot enroll in some core subjects, such as math, because the school does not have enough room in the classes for students to take them. Some students will go an entire year without taking core subjects because their school cannot fit them into the classes." (FAC ¶ 238; see also ¶¶ 220, 229, 270, 272.) Some overcrowded schools "maintain[] 'overflow' classes to warehouse those neighborhood children who cannot attend [the school] because the school is too crowded to accommodate more children and the students have not yet been placed in other schools. These overflow classes house children from multiple grade levels—sometimes children from kindergarten all the way through sixth grade—together in a single classroom with a single teacher. Children can remain in these overflow classes for as long as two or three months without being placed in regular classes or being bussed to other schools." (FAC ¶¶ 267, 271.)

These allegations illustrate in painstaking detail the galling extent of educational deprivations California school children now suffer. In addition to describing specific instances in which California school children lack essential learning tools and conditions, the complaint

makes clear that "[t]he deplorable conditions at the schools the student Plaintiffs must attend fall fundamentally below even baseline standards for education" and that "[t]he conditions enumerated here are the direct and foreseeable consequence of the State's failure to discharge its duty; these conditions could not exist if State officials carried out their mandate." (FAC ¶ 4.) Taken together or separately, these allegations could not more clearly articulate the deprivations plaintiffs suffer, and the State's duty to prevent and redress these deprivations.

C. This Case Addresses Not Local School Districts, But the State's Responsibility for Public Education.

Much of the State's claimed puzzlement over plaintiffs' complaint is about why it is legally responsible for the shocking conditions alleged. (See, e.g., Dem. MPA at p. 4 ["Plaintiffs should be required to specify what precisely they contend the State has done wrong"]; *id.* at 5 ["What precisely do plaintiffs contend the law or the Constitution requires the State to do that it is not now doing?"].) In fact, though miscasting its argument as a special demurrer, the State repeatedly asserts that plaintiffs ought to have sought relief against individual school districts rather than the State. (See Dem. MPA at pp. 16, 23 fn. 9, 25.) But the complaint could not more clearly pinpoint the legal source of the State's accountability for the denial to plaintiff schoolchildren of the same essential educational tools that the majority of students in the State take for granted: "The Constitution and laws of California require the State to ensure the delivery of basic educational opportunities for every child in California and vest the State with ultimate responsibility for the State's public elementary and secondary school system." (FAC ¶ 4; see also *id.* at ¶ 5.)

Whatever the State's position in this litigation, we find it hard to imagine that it comes as a genuine surprise to the State that it must bear ultimate responsibility for the delivery of education in California. "Since its admission to the Union, California has assumed specific responsibility for a statewide public education system open on equal terms to all." (*Butt, supra,* 4 Cal.4th at p. 680.) For more than a hundred years, then, our state courts have recognized, and repeatedly proclaimed, the State's responsibility for education. (See *Salazar v. Eastin* (1995) 9 Cal.4th 836, 858 ["the state has ultimate responsibility for the constitutional operation of its

schools"]; *Butt, supra*, 4 Cal.4th at p. 692 ["The State is the entity with ultimate responsibility for equal operation of the common school system."]; *Kennedy v. Miller* (1893) 97 Cal. 429, 431 ["Article IX of the constitution makes education and the management and control of the public schools a matter of state care and supervision."].)[6] Given the clarity of plaintiffs' pleading and the long-settled constitutional principle that the State maintains ultimate responsibility for delivery of public education, the State's special demurrer cannot lie as to its purported uncertainty regarding its obligation to correct the educational conditions alleged.[7]

Defendants' emphasis on school districts in its special demurrer (Dem. MPA at pp. 16, 23 fn. 9, 25) is consequently unavailing, both as to the question of the State's legal responsibility and the question of the clarity of the pleadings. "Local districts are the State's agents for local operation of the common school system . . . ." (*Butt, supra*, 4 Cal.4th at p. 681.)[8]

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[6] See also *San Francisco Unified School Dist. v. Johnson* (1971) 3 Cal.3d 937, 951 ["Education, including the assignment of pupils to schools, is plainly a state function."]; *Hall v. City of Taft* (1956) 47 Cal.2d 177, 181 ["[t]he public school system is of statewide supervision and concern"]; *Piper v. Big Pine School Dist.* (1924) 193 Cal.664, 669 [Public schooling "is in a sense exclusively the function of the state which cannot be delegated to any other agency. The education of the children of the state is an obligation which the state took over to itself by the adoption of the Constitution."]; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 278-279 ["[E]ducation is the ultimate responsibility of the state. The principle is undeniable . . . ."]; *California Teachers Assn. v. Hayes* (1992) 5 Cal.App.4th 1513, 1534 ["In this state, education is a matter of statewide rather than local or municipal concern."]; *Johnson v. San Diego Unified School Dist.* (1990) 217 Cal.App.3d 692, 698 [same]; *Tinsley v. Palo Alto Unified School Dist.* (1979) 91 Cal.App.3d 871, 903 ["[I]t is clear that in California, . . . the responsibility for furnishing constitutionally equal educational opportunities to the youth of the state is with the state, not solely in the local entities it has created."].

[7] This case is therefore not even remotely similar to *Hitson v. Dwyer* (1943) 61 Cal.App.2d 803 or *Gridley v. Selleck* (1928) 92 Cal.App. 97. (See Dem. MPA at p. 13, fn. 4.) In *Hitson*, a special demurrer was sustained because the plaintiff alleged a long-rejected theory that "the sale of intoxicating liquor was the proximate cause of injuries subsequently received by the purchaser because of his intoxication," therefore "alleg[ing] both an actionable and a nonactionable wrong." (61 Cal.App.2d at pp. 808-809.) In *Gridley*, the complaint included mutually contradictory causes of actions, one of which capped recovery at $20,000, the other alleging injury in excess of $20,000. (92 Cal.App. at p. 99.) There was obvious uncertainty as to the complaints in *Hitson* and *Gridley* where settled law clearly repudiated plaintiff's legal claim in the former case and plaintiffs offered irreconcilable factual claims in the latter. Here, by comparison, our theory of the State's duty is supported by over one hundred years of state court precedent and is consistently alleged throughout the complaint.

[8] See also *San Francisco Unified School Dist., supra*, 3 Cal.3d at p. 952 ["To carry out this responsibility [for education] the state has created local school districts, whose governing boards function as agents of the state."]; *Hall, supra*, 47 Cal.2d at p. 181; *Kirchmann v. Lake*

The State may not, therefore, seek spectator status for the workings of its common school system by attempting to transfer accountability to local districts for the denial of basic educational equality. It is simply no answer for the defendants to note that school children may have remedies against local school districts. As *Butt* establishes beyond question, the fact that a local school district is responsible—even culpable—for a fundamental failure to educate school children does not excuse the State when it is called to account for its failure to assure the constitutional operation of its schools.

The State's argument is not new; in fact, it was expressly rejected in *Butt* eight years ago. That case involved the premature closing of the schools in a school district, reducing the number of hours of instruction children would receive for the year. The *Butt* Court expressly rejected the State's asserted policy of "nonintervention" in local district decisionmaking (4 Cal.4th at p. 688) on the ground that "[t]he legislative decision to emphasize local administration does not end the State's constitutional responsibility for basic equality in the operation of its common school system. Nor does disagreement with the fiscal practices of a local district outweigh the rights of its blameless students to basic educational equality." (*Id.* at pp. 688-689.) The State therefore must "provide 'equal educational opportunity to the youth of the state'." (*Id.* at pp. 684-685 [quoting *Tinsley, supra*, 91 Cal.App.3d at pp. 903-904].) Notwithstanding that there was no dispute in *Butt* that officials of the Richmond Unified School District, not the State, were responsible for the District's insolvency, the Court soundly disclaimed the State's position that "it [could] not be constitutionally liable for how local officials manage . . . funds." (4 Cal.4th at p. 688.)

Elsinore Unified School Dist. (Sept. 27, 2000, No. E026060) 83 Cal.App.4th. 1098 [2000 WL 1411172, at *12 (Cal.App. 4Dist.)] [attached as Exh. A], [noting school districts are agencies of the state], mod. (Oct. 11, 2000) 2000 WL 1507231, at *1 [attached as Exh. B]; *California Teachers Assn., supra*, 5 Cal.App.4th at p. 1533 ["Local school districts remain agencies of the state rather than independent, autonomous political bodies."]; *Johnson, supra*, 217 Cal.App.3d at p. 698 ["the state has established subordinate local school districts whose governing boards function as agents of the state"]; *First Interstate Bank of California v. State* (1987) 197 Cal.App.3d 627, 633 ["Because education is a matter of statewide concern, school districts are considered agencies of the state for the local operation of the state school system."]; *Board of Education of the Palo Alto Unified School Dist. v. Superior Court* (1979) 93 Cal.App.3d 578, 582 [same].

In *Butt*, a unanimous Court also held that the principle that all children enjoy a fundamental right to education that the State must guarantee equally applies with full force to more than equalized funding. *Butt* explained that "the State's responsibility for basic equality in its system of common schools extends beyond the detached role of fair funder or fair legislator" and that when students are being denied the fundamental requisites of education, "the State 'has a duty to intervene to prevent unconstitutional discrimination' at the local level." (*Id.* at p. 688 [quoting *Tinsley*, *supra*, 91 Cal.App.3d at p. 904].) Surely denial of access to a basic education is no less severe here, where children are compelled to try to learn without textbooks or teachers trained to instruct on subjects of statewide curriculum requirements, than it was in *Butt*, where schools were being closed early.

Notwithstanding the State's pose of confusion, the complaint manifestly describes the nature, source, and extent of the State's responsibility for public education in California. The nature of the responsibility is "ultimate," the source is the Constitution, and the extent is complete because it is exclusive and nondelegable.

D. Every Element of an Equal Protection Claim Under *Butt* Is Alleged With Certainty.

The State focuses the bulk of its memorandum in support of the demurrer on its professed confusion concerning plaintiffs' equal protection clause claim. However, our allegations clearly support the First Cause of Action—that the State's failure to ensure that all California public school children receive basic educational tools and are assigned to safe and healthful classrooms violates plaintiffs' rights to equal protection because these children do not receive "an education basically equivalent to that provided elsewhere throughout the State" and their educational opportunity "falls fundamentally below prevailing statewide standards." (See *Butt*, *supra*, 4 Cal.4th at pp. 685, 687.) As summarized in the first paragraph and repeatedly spelled out thereafter, the complaint clearly states that plaintiffs attend schools "lack[ing] the bare essentials required of a free and common school education that the majority of students throughout the State enjoy: trained teachers, necessary educational supplies, classrooms, even seats in classrooms, and facilities that meet basic health and safety standards." (FAC ¶ 1.) And the

complaint alleges that "[t]hese appalling conditions in California public schools represent extreme departures from accepted educational standards . . . [that] have persisted for years and have worsened over time." (*Ibid.*)

These allegations discredit the State's claim that "plaintiffs do not even attempt to" allege facts that satisfy *Butt*. (Dem. MPA at p. 3.) The State misreads *Butt* as if it concerned only discrimination between or among districts. (*Ibid.*) Certainly the equal protection violation at issue in *Butt* concerned a school district's decision to close all its schools six weeks early, thereby denying the students in that district substantially the same number of instructional days received by other children in the State. The *Butt* Court's reference to districts makes sense because the Court was reviewing an entire district's decision to shut down its schools. But nothing in *Butt* even remotely limits the equal protection clauses of our State Constitution to district-by-district comparison only. Going to the heart of those clauses' guarantee, the *Butt* Court stressed "the impact of the threatened closure on District *students'* fundamental right to basic educational equality . . . ." (4 Cal.4th at p. 686, italics added.) The Court thus referred to the unconstitutional disparity among "districts, schools, and individual students." (*Ibid.*)

The State's crabbed construction of *Butt* would radically reshape California law so that the fundamental right to education would no longer be an individual right, and would result in an equality jurisprudence that afforded equal protection only to and between school districts. So limited, children would necessarily have no constitutional claim to "basic educational equality" where, for example, a district acted to close only some of its schools a few weeks early, so that "viewed as a whole" the district did not fall fundamentally below the prevailing standards of districts elsewhere. Such an interpretation cannot be the law. If children in a particular school district are denied the basic necessities of an education by virtue of the closure of their school six weeks early, then those children are denied constitutional equality by virtue of the closure, irrespective of whether some or all other children in the same district attend schools that remain open. The State's interpretation cannot be squared with *Butt*, where the Court stated that "access

to a public education is a uniquely fundamental *personal* right."[9] (*Butt*, *supra*, 4 Cal.4th at p. 681, italics added.)

Judged against the elements of the claim under *Butt,* there is not a shadow of uncertainty in the complaint. As we have shown, the complaint clearly and repeatedly notifies the State and State officials of the nature of our claim, that plaintiffs are deprived of educationally necessary tools and conditions available to most California public school children. It locates a constitutional source of this claim in our State's equal protection clauses. And it explicitly identifies the extent of the problems as the denial of basic educational opportunities to tens of thousands of children, primarily children of color and low-income children, assigned to schools different from the majority of California's public schools that more privileged children attend.

E. No Special Demurrer Lies for Failure To Specify Remedies.

Defendants mistakenly charge that our complaint must be amended to specify "what precisely . . . [the State] should be required to do in the future." (Dem. MPA at p. 4.) As we have discussed in section II(A), of course we need not spell out in the complaint precise remedies for each of the constitutional and statutory violations alleged. Nonetheless, plaintiffs have gone much further than any California case requires to delineate exactly how the State fails to discharge its constitutional duty to plaintiff children and to describe generally the nature of steps it could undertake to meet its constitutional obligation.[10] In particular, plaintiffs have articulated a three-part approach to remedying the educational deprivations identified, consisting not only of the creation of standards, but also of monitoring and enforcement to make certain that no child in California is denied the bare essentials of an education.

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[9] See generally *Adarand Constructors, Inc. v. Pena* (1995) 515 U.S. 200, 230 [115 S.Ct 2097, 132 L.Ed 2d 158] [stating that a "long line of cases understand[s] equal protection as a personal right."] [attached as Exh. C].

[10] The complaint deliberately stops short of specifying exact procedures to be adopted, leaving to state officials the opportunity to propose how best to create and implement an effective remedy. In no way, then, can plaintiffs be fairly accused of seeking to restructure the educational system or to usurp the State's constitutionally assigned responsibilities.

1. The complaint articulates broadly what State officials should do to ensure basic educational equality for all California public school children.

Plaintiffs explain in the complaint that "[t]hrough this lawsuit, Plaintiffs seek to compel Defendants' compliance with their constitutional duties, by the means of their choice, to (1) ensure that every child in California has an opportunity to obtain a basic education and (2) ensure that no child is compelled to attend a fundamentally unequal school that lacks those requirements of a basic education that are provided to most children." (FAC ¶ 18.) We also allege that "[t]he State and responsible State officials cannot reasonably assure that California's public school children receive basic educational opportunity in the system of delegated authority the State has devised unless the State does each of the following: (1) establishes adequate minimal standards regarding educational personnel, materials, and school facilities; (2) takes steps, by way of inspection or otherwise, to determine whether conditions violating those standards exist in California schools; and (3) takes steps to prevent violations from occurring and, when occurring, to ensure that conditions violating those standards are corrected or remedied." (FAC ¶ 294.)

More particularly, plaintiffs spell out at paragraph 293 of the complaint that "[t]he State and responsible State officials have failed their constitutional obligation to the children in California public schools in four ways," and then plainly enumerate each of these ways:

> First, having delegated authority to local school districts, the State and responsible State officials have failed to establish even minimal standards for many aspects of the type of educational personnel, materials, and facilities encountered by students in the public schools. Second, in those few instances in which the State or responsible State officials have purportedly established minimal standards, the standards oftentimes are insufficient to ensure minimal educational opportunity. Third, whether or not those few existing State standards are adequate, the State and responsible State officials have done nothing effective to determine whether conditions in California public schools violate those standards. Fourth, even when violations of purported minimal standards have become known to the State, the State and responsible State officials have taken no effective steps to remedy violations known by State officials to exist.

(FAC ¶ 293.)

Even more specifically, the complaint sets out the manner by which the State deprives plaintiffs of the basic tools and conditions necessary to learn. With respect to facilities, for example, the complaint alleges that

> [t]he State has established no effective or specific minimal standards for all school facilities with regard to conditions that directly affect the ability of students to obtain an education, including but not limited to: the provision of heat or air conditioning to classrooms, the ventilation of classrooms, the infestation of school buildings and classrooms with rats, mice, cockroaches and other vermin, and the cleanliness or repair of school facilities. Indeed, the State and responsible State officials do not take responsibility or authority for or even monitor these conditions.

(FAC ¶ 295.) And with respect to teachers, the complaint alleges that

> [t]he State and responsible State officials do not oversee standards that govern teachers and indeed have no effective standards or mechanisms for monitoring and rectifying the extent to which individual schools attempt to provide education through large numbers of under- or noncredentialed teachers. Nor have the State and responsible State officials established any mechanisms to ensure that all schools are staffed with minimally sufficient numbers of qualified teachers who can deliver the instruction capable of enabling students to satisfy the State's new grade promotion and high school exit exam requirements. The State and responsible State officials treat all use of substitute teachers as a local district employment issue, rather than taking responsibility for ensuring that California public school children have permanent, qualified, and credentialed teachers in their classrooms.

(FAC ¶ 296.)

The complaint notes, too, that "[t]he State has purportedly established minimal standards with regard to a few conditions affecting students' ability to obtain an education, including the availability of textbooks and toilets in schools, classroom size, and classroom sound conditioning. (FAC ¶ 297.) The complaint then alleges that "in these few instances in which the State has purportedly established standards, the State has not sufficiently set the standards to make them meaningful, or has done nothing to determine whether—as demonstrated herein—those standards, are routinely ignored, or both." (*Ibid.*) Thus, the complaint explains that "in spite of a constitutional requirement that textbooks be furnished to students without cost and statutory requirements that textbooks be sufficiently available to students, the State does not take charge of monitoring the availability or physical quality of texts and has not ensured that each student receives free textbooks in school. In addition, the State has instituted no routine system of determining which schools fail to meet even the State's inadequate standard of sufficient availability." (*Ibid.*) The complaint states that "[i]n spite of regulatory requirements that students learn in acoustically comfortable instructional spaces, the State has instituted no routine

system of determining which schools fail to meet this standard and so the State and responsible State officials do not have knowledge of which schools fail to meet the standard." (*Ibid.*) And the complaint declares that "in spite of regulatory requirements concerning square footage of classroom space, the State has instituted no routine system of determining which schools fail to meet this standard, and the State and responsible State officials do not have information concerning which schools fail to meet the standard." (*Ibid.*)

These allegations make clear—painfully clear from the perspective of plaintiffs' daily school experiences—what adequate State standards, monitoring, and enforcement would look like if the State were actually ensuring plaintiffs' fundamental right to basic educational equality.

2. The existing "standards" to which the State adverts do not prevent or redress plaintiffs' educational deprivations.

As we have just analyzed, the State falsely asserts that plaintiffs "do not allege that existing standards are constitutionally inadequate." (Dem. MPA at p. 12.) We do precisely that in paragraph 293. Indeed, though the State attempts to persuade this Court that it has promulgated effective "standards" dealing with textbooks, teachers, and facilities (Dem. MPA at pp. 13-17), what is set out are either unenforceable standards or standards neither monitored nor enforced by the State. We briefly address the State's claims.

a. The Existing Provisions on Textbooks Are Ineffective.

While it is certainly reassuring that "the State agrees with plaintiffs that every student in every public school should have a textbook" (Dem. MPA at p.14), that agreement does not satisfy the State's constitutional obligation. The State cites no constitutional provision or statute that comes even close to mandating that every child receive "his or her own textbook or educational materials in core subjects (1) to use in class without sharing with another student; and (2) to use at home each evening for homework." (FAC ¶ 65.) Indeed, in response to plaintiffs' discovery request concerning the availability of textbooks, the State agencies stated: "Defendants do not have this information. The extent of the availability of educational materials in all districts is unknown." (Declaration of Amy Kott in Support of Plaintiffs' Memoranda in Opposition to Demurrer and Motion to Stay, Exh. A at p. 5 [filed concurrently].)

The statute on which the State leans most heavily, Cal. Educ. Code § 60119(a), provides, in practice, more excuses for noncompliance than effective remedies. It permits districts to lose up to two years without even a hearing to determine whether children go to school "with insufficient textbooks or instructional materials, or both."[11] After the two years, the statute requires only that a district lacking such textbooks must announce a "plan" to provide books. In addition, contrary to the State's representation, the statute has not in the past compelled "the governing board of each district . . . to hold a public hearing each fiscal year to determine" availability of textbooks. (Dem. MPA at p. 13.) The State neglects to note that, according to a November 6, 1998 State Department of Education ("CDE") memorandum, the CDE Waiver Office estimated that "over 800 [out of 994] districts had not held hearings for one or more of the [preceding] 4 years," and that the CDE itself had prepared a form request to facilitate districts seeking to obtain waivers from the hearing requirement. (See Declaration of Lois Perrin in Support of Motion for Court-Appointed Neutral Survey Expert on Textbook Availability, Exh. A at p. 3, ¶ 2.) If, in *Butt,* closing school six weeks early denied students their constitutional right to basic educational equality, then as much as two years without even a hearing regarding the availability of books, much less the books themselves, would be no less unconstitutional. Such denial (and far less) would manifestly deprive students of "an education basically equivalent to that provided elsewhere throughout the State" (*Butt, supra*, 4 Cal.4th at p. 685), and work "a real and appreciable impact" on a child's opportunity to learn. (*Id.* at p. 686.)[12]

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[11] The State charges that plaintiffs "appear never to have heard of" § 60119. (Dem. MPA at p. 14.) However the State has opposed our motion to appoint a neutral survey expert, which expressly relies in part on § 60119.

[12] Indeed, the State Legislature has expressly declared the fundamental importance of providing each student with textbooks: "The Legislature declares that, to the extent that every pupil does not have access to textbooks or instructional material in each subject, a pupil's right to educational opportunity is impaired." (Statutes 1994 Chapter 927, Section 1 [uncodified Section 1 to California Education Code § 60177] [attached as Exh. D]; see also *California Teachers Assn. v. Riles* (1981) 29 Cal.3d 794, 811; *Cardiff v. Bismarck Public School Dist.* (N.D. 1978) 263 N.W.2d 105, 113 [attached as Exh. E] ["[I]t is difficult to envision a meaningful educational system without textbooks. No education of any value is possible without school books."] [citation omitted].)

b. The Existing Provisions Concerning Teachers Do Not Address the Fundamental Problems.

The State mischaracterizes plaintiffs' allegations regarding teachers, and then claims that "it is impossible to know what the case is about." (Dem. MPA at pp. 6, 10-12.) In fact, plaintiffs' allegations concerning untrained and ill-equipped teachers are both clear and straightforward. As the complaint makes clear, an obvious bare essential required for opportunity to learn is a "teacher [] who can deliver the instruction capable of enabling students to satisfy the State's new grade promotion and high school exam requirements." (FAC ¶ 296.) The complaint plainly alleges that "the State and responsible State officials [have not] established any mechanisms to ensure that all schools are staffed with minimally sufficient numbers of qualified teachers" who can meet this standard. (*Ibid.*) Indeed, plaintiffs identify "at least 100 California schools [that] attempt to instruct students with teaching staff who are grossly underprepared and inexperienced and who have virtually no seasoned mentors to turn to for in-practice guidance." (FAC ¶ 9.)

In addition, the complaint describes several situations in which schoolchildren have no permanent teacher for a semester or even a year at a time, so that students must take instruction from a series of substitute teachers who oftentimes have no training or expertise in the particular subject matters the students are assigned to learn. (FAC ¶¶ 85, 102, 105, 114, 179, 193, 198, 212, 221, 228, 245.) The State says not one word about this practice in its memorandum, notwithstanding its seeming agreement with plaintiffs that every classroom must have a teacher competent to teach State-mandated course requirements. (Dem. MPA at p. 10.) The State does not purport to have standards in place to address this problem.

The State's attempt to persuade this Court that it has "enacted remedial and corrective measures" (Dem. MPA at pp. 9-10) implicitly concedes that the absence of properly trained teachers causes real and substantial harm to plaintiff students' right to an education. The State's recitation of laws passed and pronouncements by the Governor represents an obvious effort to rebut plaintiffs' allegations that the State is not satisfying its constitutional obligation as to teachers. Whether these actions satisfy the State's constitutional obligation is, of course, at the

heart of this litigation. Whatever the final outcome, the State's response itself reveals that the allegations are "sufficiently clear to apprise the defendant of the issues that must be met." (*Merlino,* 90 Cal.App.2d at p. 108.) The State manifestly understands what is meant by allegations stating that plaintiff children are denied their right to basic educational equality when, unlike the majority of students in public schools, they must attempt to learn from untrained teachers not yet prepared for the classroom.

c. Existing Provisions on Facilities and Overcrowding Fall Far Short of Addressing the Conditions Alleged in the Complaint.

The State argues that California Education Code section 17593, providing that "the clerk of each district . . . shall, under the direction of the governing board, keep the schoolhouses in repair during the time school is taught therein," and that California Code of Regulations, title 5, section 631 (attached as Exh. F), providing that "governing Boards, superintendents, principals, and teachers are responsible for the sanitary, neat, and clean condition of the school premises and freedom from conditions that would create a fire or life hazard," set basic standards for maintenance and safety of educational facilities. (Dem. MPA at p. 15.) Its position is that "[i]f any school district has violated [the standard], plaintiffs have a remedy against the district. (*Id.* at p. 13.)

First, the statute and regulation do not govern many of the conditions plaintiffs describe in the complaint. For example, keeping schoolhouses in good repair and sanitary, neat, clean, and free from fire or life hazards does not include installing air conditioning in schools that operate in extremely hot temperatures—in some cases above 100 degrees—as do many of plaintiffs' schools. (See FAC ¶¶ 83, 96, 110, 116, 119, 126, 133, 139, 140, 154, 162, 168, 216, 225.) Second, even as to those conditions covered by the statute and regulation cited, the State's response that plaintiffs must pursue remedies against individual school districts is defective. As we have previously analyzed, California law is clear that the State bears "ultimate responsibility for equal operation of the common school system" (*Butt, supra,* 4 Cal.4th at p. 692), which is an obligation the State may not relegate to districts without appropriate superintendence.

The State fails to identify any State constitutional provision, statute or regulation applicable to overcrowding. Instead, it facilely responds that "[t]his is a matter about which, once again, there is no dispute as a matter of policy. . . . The only real solution to overcrowded schools is to build new ones." (Dem. MPA at p. 15.) Once again, it is superficially comforting that the State concurs with plaintiffs that new schools must be built to eliminate overcrowding, but this agreement does not satisfy the State's constitutional obligation.

The State, moreover, improperly relies on a school bond, enacted by voters in 1998, to suggest that the State is fulfilling its obligation to build new schools to eliminate overcrowding. (Dem. MPA at p. 16.) Nowhere does the State contend that this bond issue, or any other measure currently underway, will in fact result in the correction of identified overcrowding. Indeed, here, as with other conditions, the State cannot even say which districts or schools suffer from what degree of overcrowding. Thus, the State utterly fails to address plaintiffs' allegations that many children—because their districts lack the necessary funding to build needed new schools, and therefore must resort to stopgap measures such as multitracking and busing, which cost students days of instruction or hours of irreplaceable time as students are bused to less crowded schools (FAC ¶¶ 65-66)—are deprived of "an education basically equivalent to that provided elsewhere throughout the State." (*Butt, supra*, 4 Cal.4th at p. 685.)

The lengths to which the State goes to impress on the Court all it is doing with respect to some of the conditions identified in the complaint end up undercutting its core argument that it "has no way of gleaning from plaintiffs' complaint the issues it must actually meet." (Dem. MPA at p. 6.) The Court should deny the State's demurrer for uncertainty.

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES IS NOT REQUIRED FOR PLAINTIFFS' CLAIMS.

The State's contention that plaintiffs must first exhaust administrative remedies before proceeding with this action is equally groundless. Tellingly, the State cites no case in which plaintiffs have been required to complete administrative review through the Department of Education's Uniform Complaint Procedures before seeking judicial redress for unconstitutional deprivations of education or of fundamentally equal access to education. The State cites no case

because no case exists: neither *Butt* nor *Salazar* nor any other case concerning the constitutionality of educational conditions in California requires plaintiffs to exhaust administrative remedies before turning to courts for relief.

A. The Uniform Complaint Procedures Do Not Apply to the Claims in the Complaint.

The administrative scheme on which the State relies is simply inapplicable to the types of claims raised in this case and in other cases concerning the opportunity to receive public education in California. Indeed, the State "concede[s] that the UCP would not cover a claim of *inter-district* disparity in educational experience." (Dem. MPA at p. 23, fn. 9 [italics in original].) But a statewide claim based on comparison across district borders is exactly the claim plaintiffs make here. In an effort to bypass this fundamental flaw in the State's argument, the State attempts to recast this case as if it did not involve inter-district, and indeed statewide, disparities. That attempt must fail. Notwithstanding the State's attempt to characterize the claims otherwise, the complaint clearly alleges that some students, located throughout the State of California, lack educationally required tools and conditions available to other children in the State.

1. The Uniform Complaint Procedures Expressly Apply Only to Violations by Local Agencies and Not to Violations by the State.

The section of the Uniform Complaint Procedures defining their scope contains three subsections. Section 4610(a) states that the Uniform Complaint Procedures "appl[y] to the filing, investigation and resolution of a complaint regarding an alleged violation *by a local agency* of federal or state law or regulations governing educational programs . . . ." (Cal. Code Regs., tit. 5, § 4610, subd. (a), italics added [attached as Exh. G].) "Local agency" is defined to exclude the State and State agencies. (*Id.* § 4600, subd. (j)] [attached as Exh. H].)

Subsection (b) states that the Uniform Complaint Procedures also "appl[y] to the following programs administered by the Department [of Education]": Adult Basic Education, Consolidated Categorical Aid Programs, Migrant Education, Vocational Education, Child Care and Development, Child Nutrition, and Special Education. (Cal. Code Regs., tit. 5, § 4610, subd. (b) [attached as Exh. G].) None of those programs has any relevance in this case.

Subsection (c) says that the Uniform Complaint Procedures also apply to: "the filing of complaints which allege unlawful discrimination on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, in any program or activity conducted *by a local agency*, which is funded directly by, or that receives or benefits from any state financial assistance." (Cal. Code Regs., tit. 5, § 4610, subd. (c), italics added [attached as Exh. G].)

The relevant scope provisions, sections 4610(a) and (c), both define the conduct at issue in Uniform Complaint Procedures investigations as conduct by a local agency, not by the State. Any possible doubt as to the scope of the Uniform Complaint Procedures is resolved by the enforcement provision quoted in part in the State's memorandum in support of the demurrer. (Dem. MPA at p. 18.) That section, 4670(a), states:

> Upon determination that *a local agency* violated the provisions of this chapter, the Superintendent shall notify the local agency of the action he or she will take to effect compliance. The Superintendent may use <u>any means authorized by law</u> to effect compliance, including: . . . .

(Cal. Code Regs., tit. 5, § 4670, subd. (a), italics added [attached as Exh. I] [underlining identifies the language quoted in the State's MPA].)

The Uniform Complaint Procedures enforcement provision is expressly limited to violations by a local agency. "Local agency" is defined in section 4600(j) to exclude the State or State officials or agencies. There is, quite expressly, no remedy available under the Uniform Complaint Procedures where the claim is that the State and State agencies have violated their obligations to school children statewide.

2. The Uniform Complaint Procedures Do Not Apply to the Types of State Law Claims in the First Amended Complaint.

In addition to not applying to conduct by the State, the Uniform Complaint Procedures do not apply to all the species of discrimination identified in plaintiffs' complaint. Contrary to the State's contention that the Uniform Complaint Procedures govern any and all discrimination claims, including discrimination against poor students (see Dem. MPA, pp. 17-18, 23 fn. 9), the Uniform Complaint Procedures explicitly cover "complaints which allege unlawful discrimination on the basis of ethnic group identification, religion, age, sex, color, or physical or

mental disability, in any program or activity conducted by a local agency . . . ." (Cal. Code Regs., tit. 5, § 4610, subd. (c) [attached as Exh. G].) This list does not include an equal protection claim arising under *Butt* concerning discrimination between classes of students defined by their possession or deprivation of essential tools and conditions, which plaintiffs challenge in this case. Likewise, the Uniform Claim Procedures do not apply to claims that the State and State agencies have denied school children due process or violated the constitutional guarantee of an education, which plaintiffs also allege here.

3. Administrative Exhaustion Is Not Required for the Federal Title VI Racial Disparate Impact Claim.

In addition to the dispositive considerations discussed in this section, federal precedent precludes a requirement of administrative exhaustion before bringing a claim based on disparate impact on school children of color in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (attached as Exh. J), and 34 C.F.R. § 100.3(b)(2) (attached as Exh. K). The Ninth Circuit held, in *Kling v. County of Los Angeles* (9th Cir. 1980) 633 F.2d 876, 879 (attached as Exh. L), that no administrative exhaustion requirement could be imposed for a claim under a statute that the Court analogized to a Title VI claim "because the procedures do not afford individual complainants adequate relief." The Ninth Circuit's reasons for that conclusion apply with full force to the Title VI claim in the complaint.

B. Where, As Here, Administrative Remedies Are Unavailable or Inadequate, Administrative Exhaustion Is Not Required.

Nothing precludes plaintiffs from making their choice to proceed in court where an administrative process does not govern their claims and would not provide adequate remedies. It has long been settled in California that "the rule requiring exhaustion of administrative remedies does not apply where an administrative remedy is unavailable or inadequate." (*Tiernan v. Trustees of California State University and Colleges* (1983) 33 Cal.3d 211, 217; see also *Park 'N Fly of San Francisco, Inc. v. City of South San Francisco* (1987) 188 Cal.App.3d 1201, 1209 ["Where no forum or administrative remedy is afforded for the issues raised, recourse to the local administrative agency is not required before initiation of court action."].) Of course this is so because "[t]he doctrine of exhaustion of administrative remedies does not require a litigant to

present his or her claim to an administrative body powerless to grant relief." (*Tiernan, supra*, 33 Cal.3d at p. 218.) Here, plaintiffs could not have benefited from administrative review of their claims because the Uniform Complaint Procedures allow for relief only against local agencies and only for certain claims.

1. Plaintiffs Need Not Exhaust Administrative Remedies Where the Administrative Body Has No Pervasive and Self-Contained System of Administrative Procedure and Where the Subject of the Suit Falls Within the Courts' Traditional Expertise.

In *Rojo v. Kliger* (1990) 52 Cal.3d 65, 87-88, the California Supreme Court explained in detail how courts should determine whether plaintiffs must exhaust administrative remedies before resorting to courts to redress constitutional injuries, including discrimination claims. The Court held that plaintiffs need exhaust administrative remedies only where the administrative body has a comprehensive internal remedy that governs challenged claims. (*Ibid.*) The Court considered whether a plaintiff needed to exhaust administrative remedies provided pursuant to the Fair Employment and Housing Act before raising "constitutional and common law claims not specifically within the agency's jurisdiction" (*id.* at p. 85), and explained that because "the FEHA does not have a 'pervasive and self-contained system of administrative procedure' for general regulation or monitoring of employer-employee relations so as to assess or prevent discrimination or related wrongs in the employment context," plaintiffs need not exhaust FEHA administrative remedies before resorting to courts to redress constitutional discrimination claims. (*Id.* at p. 87-88 [quoting *Karlin v. Zalta* (1984) 154 Cal.App.3d 953, 983].)

In addition, the Court held that "nor are the factual issues in an employment discrimination case of a complex or technical nature beyond the usual competence of the judicial system. Rather, a judge or jury is fully capable of determining whether discrimination has occurred." (*Id.* at p. 88.) Because the Court recognized that a judge is fully capable of deciding discrimination cases, the Court held that "these are not cases having such a paramount need for specialized agency fact-finding expertise as to require exhaustion of administrative remedies before permitting an aggrieved person to pursue his or her related nonstatutory claims and

remedies in court." (*Ibid.*; see also *Mathew Zaheri Corporation v. Mitsubishi Motor Sales of America, Inc.* (1993) 17 Cal.App.4th 288, 293 ["where the Legislature has not granted an administrative agency a 'pervasive and self-contained system of administrative procedure' and the agency possesses no greater expertise to consider the controversy than a judicial forum, exhaustion of the administrative remedy is not required"].)

Rojo demonstrates the fallacy of the State's claim that plaintiffs must exhaust administrative "remedies" in this case. Like the situation considered in *Rojo*, here the administrative process could not provide a remedy for the claims plaintiffs raise in court because plaintiffs' claims are against the State and State agencies, not against any local agency as defined in the Uniform Complaint Procedures, and because plaintiffs bring claims beyond the purview of the UCP.

In addition, like the situation considered in *Rojo*, the administrative body here possesses no special expertise from which this Court could benefit; this Court is fully equipped to determine that unconstitutional deprivations and discrimination have occurred. Indeed, the courts, which routinely consider equal protection and antidiscrimination cases, are surely better equipped to decide discrimination claims than are the Department of Education and local school districts, whose expertise have little to do with assessing claims of discrimination and everything to do with making educational decisions affecting school children in California. (*Cf. Regents of the University of California v. Superior Court* (1990) 225 Cal.App.3d 972, 980 ["It would serve no purpose to recite in detail the familiar principles governing an equal protection analysis."].)

2. The Ravenswood City Elementary School District Response Illustrates the Inapplicability of Administrative Review in this Case.

The Ravenswood City School District response to the administrative complaint plaintiffs originally filed highlights the inadequacy and failure of the administrative process here. Although plaintiffs alleged broadly that "[t]he schools at which these manifestly substandard conditions [described in the complaint] exist are overwhelmingly populated by low-income and nonwhite students and students who are still learning the English language," (Declaration of Benjamin Rozwood in Support of Defendant State of California's Request to Take Judicial

Notice and Motion to Stay ["Rozwood Decl."], Exh. A, Complaint p. 5: 6-8), the State declined direct intervention pursuant to Cal. Code Regs., tit. 5, § 4650(a)(ii), and instead referred the complaint to a number of local districts for separate investigations. (Rozwood Decl., Exh. B, C.) The Ravenswood City School District responded to plaintiffs' complaint by claiming that all children in the district, the majority of whom are nonwhite, suffer the same conditions and, therefore, that the district had not discriminated on the basis of race. (Rozwood Decl., Exh. D.)

Plaintiffs are not surprised to learn that the district applies its policies evenly across its schools and that all the schools in the district reflect similar conditions, and plaintiffs have never alleged otherwise. But the uniform denial to all students—all or nearly all of whom are poor children of color—in a particular district of essential learning tools and conditions does not denigrate a statewide claim of race, poverty, geographic, and descriptive discrimination. Put more simply: the facts that a particular district is composed nearly exclusively or exclusively of students of color and/or poor students and that all students in that district suffer similar learning deprivations does not exonerate the State from the claim that its conduct discriminatorily impacts students on the basis of race and/or poverty. Thus, the Ravenswood City School District's response that the district itself had not discriminated against its students did not address the students' administrative claim that the State had discriminated against them, and other children in other districts, on the basis of race.

The Ravenswood City School District response demonstrated that nothing would be accomplished through district-by-district review of allegations that charged districts with no fault and that districts lacked the power to redress. Consistent with *Rojo*, then, there is no reason for plaintiffs to proceed with administrative review here, where there is no pervasive and self-contained system for administrative review of State action or inaction, as distinct from local district action or inaction.

The Ravenswood City School District response also demonstrates that, contrary to the State's suggestion, plaintiffs' decision to withdraw the administrative complaint did not concede either the applicability or the value of the administrative process. Instead, plaintiffs' decision to

withdraw the administrative complaint reflected the reality, as shown through the Ravenswood City School District response, that the administrative process does not govern plaintiffs' claims and that the process proved itself as ineffective in practice as its stated purpose suggested the process would be. Plaintiffs therefore withdrew the administrative complaint.[13]

Because the Uniform Complaint Procedures provide no remedy for the claims plaintiffs are pursuing, there is no exhaustion requirement. The Court should not accept the State's invitation to create out of whole cloth a requirement that California public school children delay in seeking relief against the State while local school districts review claims they have no ability to resolve.

IV. CONCLUSION

For the foregoing reasons, the demurrer should be denied.

Dated: October 17, 2000

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[13] Contrary to the State's suggestion that plaintiffs withdrew the complaint because "[t]hey wanted to make allegations without subjecting their contentions to challenge by persons actually knowledgeable about the facts" (Dem. MPA at p. 23), plaintiffs in fact withdrew the administrative complaint for precisely the opposite reason: plaintiffs seek remedies from the State and State agencies based on rights that must be assessed on a statewide scale. Whether or not individual school districts are also culpable, plaintiffs are not pursuing claims against them in this case. When the administrative process pursuant to the Uniform Complaint Procedures not only failed to trigger that expeditious State review but burdened school districts needlessly and also appeared to delay the possibility of a statewide remedy, plaintiffs withdrew the administrative complaint.