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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' MOTION TO STAY

Hearing Date: October 30, 2000
Department: 16, Hall of Justice
Judge: Hon. Peter J. Busch
Date Action Filed: May 17, 2000

I. THIS COURT SHOULD NOT DELAY RESOLUTION OF THIS CASE PENDING AN ADMINISTRATIVE PROCESS THAT CANNOT AID THIS COURT'S REVIEW OF THE STATE'S RESPONSIBILITY FOR THE DEPLORABLE CONDITIONS UNDER WHICH PLAINTIFFS ATTEND SCHOOL.

This Court should deny defendants' motion to stay this case.[1] First, for the reasons articulated in Plaintiffs' Memorandum of Points and Authorities in Opposition to the Demurrer, the First Amended Complaint more than sufficiently articulates the bases for plaintiffs' claims, and this Court need not stay the case pending clarification of the First Amended Complaint. Second, plaintiffs do not, as defendants allege, "have a perfectly satisfactory administrative remedy." (See Motion to Stay MPA at p. 2.) Plaintiffs' Memorandum of Points and Authorities in Opposition to the Demurrer articulates the reasons why the administrative review process does not govern plaintiffs' claims and is therefore unsatisfactory to remedy the claims. Those same reasons militate against staying this case pending administrative review pursuant to the primary jurisdiction doctrine or to this Court's general equitable powers.

A. The Primary Jurisdiction Doctrine Does Not Apply to the Facts of this Case.

Defendants' citation merely to boilerplate definitions of the primary jurisdiction doctrine, but not to a single case applying the doctrine on similar facts, reveals the weakness of defendants' claim that the doctrine should apply here. In fact, the primary jurisdiction doctrine cannot apply here: "the [primary jurisdiction] doctrine cannot apply in cases where the administrative agency has no jurisdiction." (*Kemp v. Nisson Division, Nissan Motor Corporation in U.S.A.* (1997) 57 Cal.App.4th 1527, 1532.) As explained in the Memorandum of Points and Authorities in Opposition to the Demurrer, the Uniform Complaint Procedures do not govern plaintiffs' claims, and therefore the Department of Education has no administrative jurisdiction over these claims.

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[1] Although the State of California filed the Motion to Stay, defendants State Department of Education, State Board of Education, and State Superintendent of Public Instruction joined the State's motion. Thus, we reference the motion and arguments as if all defendants had filed. In citations, we refer to the Memorandum of Points and Authorities in Support of Motion to Stay as "Motion to Stay MPA."

Even if the Department of Education did have administrative jurisdiction to resolve the educational deprivations at issue here, nonetheless this Court should exercise its considerable discretion[2] not to invoke the primary jurisdiction doctrine because the administrative process cannot redress the injuries plaintiffs suffer and will only delay resolution of the case. (See *South Bay Creditors Trust v. General Motors Acceptance Corporation* (1999) 69 Cal.App.4th 1068, 1081 ["In determining whether the interests of justice militate against application of the [primary jurisdiction] doctrine in a particular case, courts should consider the adequacy of the available administrative remedies and the expense and delay to litigants."].) The California Supreme Court has explained that where the administrative body does not have a "pervasive and self-contained system of administrative procedure" and where the issues raised are not "of a complex or technical nature beyond the usual competence of the judicial system," then resort to administrative review through the primary jurisdiction doctrine is unnecessary. (See *Farmers Insurance Exchange v. Superior Court of Los Angeles County* (1992) 2 Cal.4th 377, 396 & fn. 15 [citing *Rojo v. Kliger* (1990) 52 Cal.3d 65, 87-88].)

As explained in the Memorandum of Points and Authorities in Opposition to the Demurrer, the Department of Education has no pervasive or self-contained system of administrative procedure governing plaintiffs' claims. In addition, equal protection, due process, and race discrimination claims, as well as claims concerning the constitutional delivery of education, are well within the usual competence of the judicial system, obviating the need for prior administrative review in this case. Indeed, courts have routinely declined to invoke the primary jurisdiction doctrine where, as here, plaintiffs' claims fall within courts' traditional areas of expertise. (See, e.g., *Tenderloin Housing*

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[2] "No rigid formula exists for applying the primary jurisdiction doctrine. Instead, resolution generally hinges on a court's determination of the extent to which the policies noted above ["enhanc[ing] court decisionmaking and efficiency by allowing courts to take advantage of administrative expertise, and . . . help[ing] assure uniform application of regulatory laws"] are implicated in a given case. This discretionary approach leaves courts with considerable flexibility to avoid application of the doctrine in appropriate situations, as required by the interests of justice." (*Farmers Insurance Exchange v. Superior Court of Los Angeles County* (1992) 2 Cal.4th 377, 391-392.)

Clinic, Inc. v. Astoria Hotel, Inc. (2000) 83 Cal.App.4th 139, 143 ["the trial court correctly observed that the matter before it involved no need for an administrative agency's fact-finding expertise, but rather concerned issues of statutory interpretation appropriate for judicial resolution"], mod. [Sept. 15, 2000 No. A088494] 2000 WL 1358631 at * 1 [Cal.App. 1 Dist.] [attached as Exh. A]; *South Bay Creditors Trust, supra*, 69 Cal.App.4th at p. 1081-1082 ["referral to the Board under the primary jurisdiction doctrine was inappropriate because the factual issues and common law claims raised by South Bay's complaint [regarding unlawful business practices] are not beyond the usual competence of the courts"]; *Tovas v. American Honda Motor Company, Inc.* (1997) 57 Cal.App.4th 506, 521 [primary jurisdiction doctrine did not apply because "[a]s a matter of law, we find that the Board does not have more expertise and knowledge in the area of commercial bribery schemes than do the courts"]; *State Farm Fire and Casualty Company v. Superior Court of Los Angeles County* (1996) 45 Cal.App.4th 1093, 1112 ["What we have before us are allegations of fraud and bad faith claims handling. These are both matters with which the courts have had considerable experience. Whatever the authority of the commissioner may be to deal with at least some of these issues, there is no reason to believe that the court would benefit from initial administrative involvement."], abrogated on other grounds by *Cal-Tech Communications Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 184-185.)

This Court should likewise recognize that there is no reason to invoke the primary jurisdiction doctrine in this case. The Department of Education has no special expertise in resolving equal protection claims, claims concerning wholesale denial of education or due process, or claims of discrimination on the basis of race in violation of Title VI of the 1964 Civil Rights Act. Staying the case until resolution of district-by-district examination of the deprivations of essential learning tools and conditions described in the complaint, and then State review of each district's examination of local deprivations, would only build unnecessary delay into a case that already involves children who have gone without books and/or teachers and/or functioning toilets and/or other essential learning tools and conditions for months and years without relief, without adding anything to this Court's ability to resolve the questions whether the children are constitutionally and statutorily entitled to these learning tools. The doctrine of primary jurisdiction not only will not aid this Court, but would

also build needless delay into a case seeking to resolve California public school children's urgent need for correction of the appalling conditions under which they try to learn. This Court should therefore decline to invoke the primary jurisdiction doctrine.

B. There Is No Reason to Stay This Case Pursuant to this Court's Equitable Powers.

There is similarly no reason to stay the case pursuant to this Court's general equitable powers. Defendants' citation to a single Third Circuit case does not aid its argument. In *Cheyney State College Faculty v. Hufstedler* (3d Cir. 1983) 703 F.2d 732, 738 (attached as Exh. A to Motion to Stay MPA) , the Third Circuit decided that a district court had not abused its discretion in deciding to stay a case concerning desegregation of Pennsylvania's higher education system pending completion of ongoing administrative review of school desegregation through the United States Department of Education. The court noted that "the issues raised by desegregation of higher education, where attendance is voluntary, differ from those in the primary and secondary fields where attendance is compulsory," making the need for judicial review less of an emergency than would exist if desegregation claims were raised in a case concerning precollege education. (*Ibid.*) The court also observed that "[i]n 1969, eleven years before this suit was filed, the U.S. Department of Health, Education and Welfare determined that Pennsylvania was one of ten states operating a racially segregated system of higher education in violation of Title VI," and that "[i]n 1973, the United States District Court for the District of Columbia ordered HEW to commence enforcement proceedings against the states that were not in compliance with Title VI," including Pennsylvania. (*Id.* at p. 734.)

Related litigation as well as administrative review concerning enforcement proceedings for state school desegregation was ongoing at the time the Third Circuit issued its decision in *Cheyney*, and the district court in that case stayed the case pending resolution of the multiyear desegregation proceedings already under way. (See *id.* at p. 735 [noting "[t]he specific references made by the trial court to the administrative action pending in the U.S. Department of Education and the *Adams* litigation still underway in the District of Columbia"].) Under the unique circumstances in *Cheyney*, where plaintiffs challenged segregation of higher education rather than primary and secondary education and where the United States Department of Education and another federal court had been

actively engaged for at least 11 years already in seeking the same remedy the plaintiffs sought in *Cheyney*, the Third Circuit approved a district court's choice to exercise its equitable power to stay proceedings until resolution of the 11-year investment in the issue from another court and from an administrative body charged with enforcement of precisely the remedy plaintiffs sought in court. None of those unique circumstances is even remotely present here, where the administrative body has no administrative authority over the claims plaintiffs raise, where the administrative body has made no effort to monitor the issues plaintiffs raise,[3] and where plaintiffs seek to remedy deprivation of compulsory and mandatory education.

In fact, the equities militate against granting a stay in this case, where the ongoing hardships California elementary and secondary school students face every day without teachers and textbooks and seats in classrooms and other essential learning tools and conditions are devastating. This Court should not brook delay while the State and state agencies continue to deny these children the bare essentials of education.

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[3] In response to plaintiffs' requests for production, the state agency defendants have stated that "[d]efendants do not monitor the maintenance of district schools in California" and that "state defendants do not oversee standards that govern teachers." (Declaration of Amy Kott in Support of Memoranda in Opposition to Defendants' Demurrer and Motion to Stay ["Kott Decl."], Exh. B at pp. 17, ln. 9 & 9, lns. 9-10, respectively.) In response to plaintiffs' interrogatories, the state agency defendants have stated that "[t]he extent of the availability of educational materials in all districts is unknown." (Kott Decl., Exh. A at p. 5, lns. 12-13.)

II. CONCLUSION

For the reasons stated herein, and in Plaintiffs' Memorandum of Points and Authorities in Opposition to the Demurrer, this Court should not stay this case.

Dated: October 17, 2000

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Only the Westlaw citation is currently available.

Court of Appeal, First District, Division 3, California.

TENDERLOIN HOUSING CLINIC, INC., Plaintiff and Respondent,
v.
ASTORIA HOTEL, INC., Defendant and Appellant.

No. A088494.

Sept. 15, 2000.

(City and County of San Francisco Super. Ct. No. 981850)

BY THE COURT:

*1 Respondent's petition for rehearing is denied. It is ordered that the opinion filed herein on August 18, 2000, be modified to add the following paragraph at the end of footnote 3:

"In a petition for rehearing, the Clinic insists our holding conflicts with settled law concerning nonconforming uses. It does not. This is not a nonconforming use case. The Planning Code clearly distinguishes between nonconforming uses and permitted conditional uses. (§§ 178, 179, 180.) Significantly, the permitted conditional use provisions do not include the nonconforming use provision's declaration that "[s]uch uses ... are incompatible with the purposes of this Code ... and it is intended that these uses ... be brought into compliance with this Code as quickly as the fair interests of the parties permit." (§ 180, subd. (b); see City and County of San Francisco v. Board of Permit Appeals (1989) 207 Cal.App.3d 1099, 1106-1107, 255 Cal.Rptr. 307.) Tourist hotels are a permitted conditional use in the Chinatown Mixed Use District. The Astoria did not claim authorization for its tourist rentals under the nonconforming use doctrine, but under a code provision governing permitted conditional uses in the district. (§ 803.2, subd. (b)(1)(B)(ii).) Our holding is based on that provision, and other provisions in the Planning Code and the Hotel Ordinance relating specifically to tourist hotel rooms. Therefore, it does not rest on the same grounds as nonconforming use cases, including the recent decision by Division Five of this court in San Remo Hotel L.P. v. City and County of San Francisco (2000) 82 Cal.App.4th 1105, 98 Cal.Rptr.2d 792, modified 2000 Daily Journal D.A.R. 9877."

There is no change in the judgment.

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