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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]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION TO STRIKE

Date: February 2, 2001
Time: 8:30 a.m.
Department: 16, Hall of Justice
Judge: Peter J. Busch
Date Action Filed: May 17, 2000

STATE OF CALIFORNIA,

Cross Complainant,

v.

SAN FRANCISCO UNIFIED SCHOOL DISTRICT, a school district, WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, a school district, OAKLAND UNIFIED SCHOOL DISTRICT, a school district, RAVENSWOOD CITY ELEMENTARY SCHOOL DISTRICT, a school district, CAMPBELL UNION ELEMENTARY SCHOOL DISTRICT, a school district, CLOVERDALE UNIFIED SCHOOL DISTRICT, PIONEER UNION ELEMENTARY SCHOOL DISTRICT, a school district, PAJARO VALLEY UNIFIED SCHOOL DISTRICT, a school district, FRESNO UNIFIED SCHOOL DISTRICT, a school district, VISALIA UNIFIED SCHOOL DISTRICT, a school district, MERCED CITY ELEMENTARY SCHOOL DISTRICT, a school district, ALHAMBRA CITY HIGH SCHOOL DISTRICT, a school district, ALHAMBRA CITY HIGH SCHOOL DISTRICT, a school district, LOS ANGELES UNIFIED SCHOOL DISTRICT, a school district, MONTEBELLO UNIFIED SCHOOL DISTRICT, a school district, LYNWOOD UNIFIED SCHOOL DISTRICT, a school district, INGLEWOOD UNIFIED SCHOOL DISTRICT, a school district, LONG BEACH UNIFIED SCHOOL DISTRICT, a school district

Cross-Defendants.

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INTRODUCTION

The State's effort to drag school districts into this lawsuit both flouts this Court's November 14, 2000 Order ("Order") overruling the State's demurrer and stands contrary to longstanding precedent defining the State's responsibility for public school education. As this Court and other California courts have repeatedly held, the State, and not the school districts, bears ultimate responsibility for education. Instead of acknowledging that ultimate responsibility, however, the State alleges in its cross-complaint against 18 school districts only that "the State *may* be required in certain circumstances to act where the [districts] ha[ve] failed," Cross-Complaint ¶¶ 28, 40, 59, 74, 83, 91, 99, 107, 115, 125, 134, 142, 150, 186, 208, 218, 231, 243 (emphasis added), and not that the State has its own independent duty to ensure the delivery of public school education. The State then proceeds to charge the districts with depriving plaintiff school children with equal educational opportunities, *id.* ¶¶ 29-31, 41-42, 60-65, 75-76, 84, 92, 100, 108, 116, 126-27, 135, 143, 151, 187-201, 209, 219-20, 232-34, 244-45, even with respect to conditions over which districts cannot conceivably exercise any control. Thus, the State's cross-complaint endeavors to scapegoat 18 local school districts for the State's failure to fulfill its ultimate responsibility to deliver public school education in California.

In addition to ignoring this Court's ruling on the substantive law applicable to the State, the State has constructed in its cross-complaint a pleading that is irrelevant to this case. As this Court recognized, "this case is not about correcting the specific deficiencies suffered by these students at their specific schools in their specific school districts." Order at 2. Instead, "this case is exclusively about the State's system of oversight [of delivery of public school education] and that system's alleged inadequacies and failures." *Id.* By definition, no school district can be liable for the State's failure to have in place and execute this constitutionally mandated system of oversight. This Court recognized that the Uniform Complaint Procedure was irrelevant to this litigation, holding that "the Court will not require Plaintiffs to exhaust the existing district-level administrative remedies pointed to by the State." *Id.* The State's effort now to transform the Uniform Complaint Procedure into a uniform litigation procedure does not make the question of district-level management any more relevant. The State's cross-complaint against 18 of its agent school districts therefore could not be

more beside the point of the litigation already in progress, and, like its demurrer, is a transparent attempt to escape responsibility for assuring all children basic educational essentials. Accordingly, this Court should strike the cross-complaint from this case. *See* Cal. Civ. Proc. Code § 436 (authorizing courts to strike "irrelevant" pleadings and pleadings that are "not drawn or filed in conformity with . . . an order of the court").

ARGUMENT

I. THE CAUSES OF ACTION ASSERTED IN THE CROSS-COMPLAINT ARE IRRELEVANT TO THIS SUIT BECAUSE THEY NEITHER ARISE OUT OF THE SAME TRANSACTION AT ISSUE IN PLAINTIFFS' COMPLAINT NOR ARE THE SUBJECT OF THE CAUSES OF ACTION IN PLAINTIFFS' COMPLAINT.

A defendant may file a cross-complaint against a third party only "if the cause of action asserted in his cross-complaint (1) arises out of the same transaction, occurrence, or series of transactions or occurrences as the cause brought against him or (2) asserts a claim, right, or interest in the property or controversy which is the subject of the cause brought against him." Cal. Civ. Proc. Code § 428.10(b). The State's cross-complaint — which seeks to enjoin only some school districts from denying only some California public school children basic tools and conditions that are essential for learning and, as a matter of law, to transfer its ultimate responsibility for ensuring the delivery of these tools and conditions to local districts, Cross-Complaint Prayer for Relief ¶¶ 1(a)-18(a) — is wholly irrelevant to the transaction out of which plaintiffs' claims against the State and State agencies arose: the State and State agencies' failure to comply with their constitutional obligation to administer effectively a system of public school instruction that is available on equal terms to all California public school children.

This Court made clear in its Order overruling the State's demurrer that "this case is exclusively about the State's system of oversight and that system's alleged inadequacies and failures." Order at 2. And this Court limited "all stages of the case, including pleading" to that "exclusive[]" focus. *Id.* The districts obviously cannot bear liability for the State's failure to institute and operate effectively a system of oversight, nor can claims against the districts regarding particular conditions play a role in a determination of whether "the oversight and management systems the State has in place . . . are legally adequate and whether they are being properly implemented." *Id.* Because

"this case is not about correcting the specific deficiencies suffered by these students at their specific schools in their specific school districts," *id.*, the cross-complaint impermissibly mispositions the polestar of this case, and should be stricken. *See Greshko v. County of Los Angeles,* 194 Cal. App. 3d 822, 830 (1987) (courts have the power to strike irrelevant matter and to limit the focus of the proceedings to the issues framed by viable pleadings); *Hale v. Laden*, 178 Cal. App. 3d 668, 673 (1986) (same); Cal. Civ. Proc. Code § 436 (court can strike pleading "at any time in its discretion").

A. The State Mischaracterizes Plaintiffs' Claims in an Effort to Import Irrelevant Issues Into This Suit Through Its Cross-Complaint.

The State's 18 causes of action, none of which allege that the local districts have failed to administer a statewide educational system, make claims that are plainly ancillary to the basis of this lawsuit about the State's failure to establish an effective system of educational oversight and accountability running to all of its schools. The cross-complaint merely alleges that the districts have violated such vague statutory and regulatory obligations as the obligation to "furnish, [and] repair . . . the school property of its districts." *See* Cal. Educ. Code § 17565; Cross-Complaint ¶¶ 31, 42, 62-63, 126-27, 151, 187, 189, 191, 193-96, 198-99, 234, 244-45. Even if some districts have failed to perform some ministerial function, however, that failure in no way absolves the State of its responsibility to identify, monitor, oversee, prevent, and correct the conditions in the districts and in the schools and classrooms. The State cannot, as it tries to do in its cross-complaint, point fingers elsewhere because our Constitution provides no "elsewhere." The only entity with ultimate responsibility for education is the State itself. *Salazar v. Eastin*, 9 Cal. 4th 836, 858 (1995); *Butt v. California*, 4 Cal. 4th 668, 681 (1992); Order at 1-2. In this suit concerning that State responsibility, a cross-complaint against districts, attempting to assign culpability to local districts for denials of basic educational opportunity, is irrelevant to the question whether the State itself has failed, except as an acknowledgement of the nonexistence of a system of State oversight and accountability.

Plaintiffs' complaint could scarcely be more explicit that its factual and legal bases turn on the State's failure to comply with its "nondelegable duty to ensure that its statewide public education

system is open on equal terms to all and that no student is denied the bare essentials to obtain an opportunity to learn." Complaint ¶ 4.[1] Plaintiffs' complaint thus explains:

> The State's delegation of much of its responsibility to local school districts cannot elide the State's ultimate responsibility to ensure that all California public school children receive a basic education. That delegation is "not a constitutional mandate, but a legislative choice." *Butt v. State of California*, 4 Cal. 4th 668, 688 (1992). The State's ultimate responsibility, by contrast, is constitutionally mandated. Through this lawsuit, Plaintiffs seek to hold the State and responsible State officials accountable to their constitutional mandate to provide a free and equal public school education to all California public school children.

Complaint ¶ 5; *see also* ¶¶ 7, 14, 18, 77, 291-98. Indeed, plaintiffs' complaint requests relief in the form of a requirement that the State "establish a system of statewide accountability whereby the state (1) regularly informs itself of the absence of essential learning tools and conditions and (2) ensures the repair or improvement of those conditions and supplies those tools in a timely manner." Complaint ¶ 326.

Notwithstanding the clarity — and repetition — of plaintiffs' complaint and the clarity — and brevity — of this Court's Order, the State's cross-complaint, like its demurrer, severely mischaracterizes the factual allegations and the constitutional theory of the plaintiffs' lawsuit. For example, the cross-complaint alleges that "plaintiffs seek to impose . . . an obligation on the State" "to act where the [school districts] ha[ve] failed." Cross-complaint ¶ 28, 40, 59, 74, 83, 91, 99, 107, 115, 125, 134, 142, 150, 186, 208, 218, 231, 243. As this Court stated in its Order and as the school children stated in the complaint, plaintiffs do no such thing. Instead of seeking to force the State to act only if and where the districts fail, this lawsuit seeks to force the State to act, period. Plaintiffs seek to compel the State to discharge its obligations according to California's constitutional mandates: that no constitutionally required component of public school education escapes the State's governance and control and therefore no constitutionally required component of public school education can be excluded from the State's oversight obligations. *See Butt*, 4 Cal. 4th at 688-89 ("The 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."); *see also Association*

[1] The term "Complaint" refers to Plaintiffs' first amended complaint, which was filed on August 14, 2000.

of Mexican-American Educators v. California, 231 F.3d 572, 581 (9th Cir. 2000) (en banc) ("The state's involvement is not limited to general legislative oversight but, rather, affects the day-to-day operations of local public schools."). School districts cannot undertake that State-level effort, and claims against them are therefore irrelevant to this lawsuit.

It is not hard to understand why the State would try to shift the focus of the case away from the direction this Court gave: the very filing of a cross-complaint against school districts itself demonstrates that the State has no system of oversight and accountability.[2] Nonetheless, the State cannot, through its mischaracterization of the complaint, succeed in altering the course and content of this lawsuit. The plaintiffs, and not the State, are masters of their own complaint; the plaintiffs, and not the State, determine what issues are involved in this litigation. *See April Enterprises, Inc. v. KTTV*, 147 Cal. App. 3d 805, 822-23 (1983) (plaintiffs, and not defendants, determine theory of plaintiffs' lawsuit); *see also El Monte School Dist. v. Wilkins*, 177 Cal. App. 2d 47, 52 (1960) (affirming decision to strike cross-complaint that was irrelevant "insofar as the parties in whose favor such ruling [striking the cross-complaint] was made are concerned"). The State cannot ignore this Court's Order by importing ancillary issues into this lawsuit to redefine its meaning and thereby to derail and delay the orderly progress of the suit. *See April Enterprises, Inc.*, 147 Cal. App. 3d at 823

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[2] To be clear, the Cross-Complaint advances claims that are irrelevant to plaintiffs' lawsuit, but, at the same time, it is powerful evidence that plaintiffs' claims are valid. Indeed, the State's repeated allegation that "[u]nless restrained and enjoined by order of this Court, [each of the cross-defendant school districts] will not correct such conditions, but will fail and refuse to do so," Cross-Complaint ¶¶ 33, 44, 67, 78, 86, 94, 102, 110, 118, 129, 137, 145, 153, 203, 211, 222, 236, 247, is a startling admission that the State itself has no functioning system of oversight and management to ensure delivery of basic educational conditions without assistance of a court order. The rest of the allegations in the complaint merely confirm this admission. For example, the State alleges that districts have violated statutes that do not govern the conditions plaintiffs suffer. In response to plaintiffs' allegations that elementary and middle school students lack textbooks, the State alleges that 11 districts have violated Education Code § 60411, which requires school districts to purchase textbooks "for the use of pupils enrolled in the high schools of the district," plainly having nothing to do with conditions in the elementary and middle schools singled out. Cross-Complaint ¶¶ 30-31, 42, 60, 62-63, 75, 100, 116, 143, 188-90, 192-94, 197-98, 209, 219-20, 232-34.

To cite another illustration, the State alleges that districts have violated children's constitutional right to receive education by administering severely overcrowded schools, and schools that have no air conditioning or heating systems, without even citing any particular statutory requirements that districts either meet any particular overcrowding or temperature standards or attempt to resolve these problems. Cross-Complaint ¶¶ 24, 30, 49, 57, 65, 81, 83, 89, 91, 121, 126, 140, 142, 148, 151, 162, 190. Of course, no statute holds districts responsible for operating overcrowded schools and schools that lack air conditioning or heating systems.

(holding that defendants cannot defend by "mischaracteriz[ing] the gravamen of appellant's complaint" and that "Respondents' argument in this case fails . . . [because] they confuse two different theories of action").

Just as the State agencies have not been permitted to join school districts as indispensable parties to litigation concerning the State's constitutional responsibility for public education, *see Salazar*, 9 Cal. 4th at 859 (noting that *Salazar v. Honig*, 246 Cal Rptr. 837, review den. and opn. ordered nonpub. Sept. 1, 1988 (SOO6146) [*Salazar I*], held that school districts were not indispensable parties to litigation concerning the State's constitutional obligations to provide education and holding that the question whether districts were indispensable parties "is not properly before us in any event, because it was decided in *Salazar I*"), this Court should hold that the districts are irrelevant to this suit concerning the State's constitutional responsibility for education. Indeed, the California Supreme Court held in *Serrano v. Priest* that "'we should . . . be careful to avoid converting a discretionary power or a rule of fairness in procedure [concerning the joinder of indispensable parties] into an arbitrary and burdensome requirement which may thwart rather than accomplish justice.'" 18 Cal. 3d 728, 753 (1976) (quoting *Bank of California Nat'l Ass'n. v. Superior Court*, 16 Cal. 2d 516, 521 (1940)). Just as it would have thwarted justice to join indispensable parties in *Serrano*, inclusion of school districts in this suit would thwart justice by delaying the decision and derailing the focus of the case.

The cross-complaint's injection of the districts into this lawsuit will hamstring this litigation and stall plaintiffs' efforts to learn the extent of the State's disregard for its educational obligations. One can only imagine the logistical nightmare that the parties and the Court will face in attempting to coordinate traditional motion practice and discovery. If the school districts are injected into this litigation, plaintiffs' counsel would be forced to consult with counsel for at least 18 districts, and ultimately probably more, prior to making each and every perfunctory decision. Traditional litigation procedures where all attorneys are served with each motion, each discovery request and the responses thereto, and where each attorney expects to conduct an examination of every witness, may cause mass confusion and place an undue burden on the Court. Far from aiding resolution of the issues

raised in this case, inclusion of school districts defeats altogether the speedy resolution the plaintiff school children so desperately need.

And the delay that inclusion of districts will wreak on this case has only just begun. Even more districts than those against whom the State has already cross-complained would eventually have to be included if the school districts in fact were relevant to this litigation because, as this Court recognized in its Order overruling the State's demurrer, "[i]f, in fact, the State does not have the legally required oversight and management systems in place, the same kind of problems would be prone to recur elsewhere." Order at 2. So far, the State has cross-complained against 18 school districts, notwithstanding the class action nature of the underlying complaint and the allegations in the complaint that the conditions plaintiffs describe recur in schools throughout the State of California. Complaint ¶¶ 1, 8-12, 65-66, 68-69, 275, 277-79. If the districts were indeed relevant to this lawsuit, inclusion of every school district in the State wherein class member school children lack textbooks, or permanent and trained teachers, or functioning toilets, or seats in classrooms, or comfortable classroom temperatures, or other essential learning tools or conditions could be an enormously burdensome task, especially because the State officials have already informed plaintiffs that they do not know how many classrooms lack these essential tools and conditions. As this Court understood, the number of affected school districts in which children lack essential supplies is a moving target that will change over time, depending on the particular sites of teacher departures, facilities failures, and course turnover. The State's obligation, by contrast, is fixed, and the State should not be permitted to deflect or postpone its constitutional duty by imposing the arbitrary and burdensome inclusion of school districts in this litigation.

B. The Cross-Complaint Against School Districts Does Not Conform With This Court's Order Limiting All Aspects of This Case to Exclusive Focus on The State's Responsibility.

In this Court's Order overruling the State's demurrer, this Court stated that plaintiff's limitation of this case to focus "exclusively" on "the State's system of oversight and that system's alleged inadequacies and failures" "will have ramifications to all stages of the case, including pleadings . . . ." Order at 2. Those ramifications surely include limiting pleadings filed in this lawsuit to the exclusive focus of the suit. *See* Cal. Civ. Proc. Code § 436(b) (authorizing courts to

"[s]trike out all or any part of any pleading not drawn or filed in conformity with . . . an order of the court"). For the reasons already stated, the cross-complaint against school districts does not address the focus of this lawsuit.

C. Courts Have the Power to Strike Irrelevant Cross-Complaints.

Given the irrelevancy of the school districts to the exclusive focus of this litigation, the State's cross-complaint against school districts should be struck. Thus, for example, in *El Monte School District v. Wilkins*, 177 Cal. App. 2d 47, 52 (1960), the Second District Court of Appeal upheld a decision to strike a cross-complaint that was "based on matters independent of and not within the scope of the issues in the eminent domain proceeding by the El Monte School District." Importantly, the court viewed the relevance of the cross-complaint "insofar as the parties in whose favor such ruling [striking the cross-complaint] was made are concerned." *Id. El Monte School District* therefore stands for the proposition that, no matter how related defendants may believe issues raised in a cross-complaint are to the underlying litigation, the cross-complaint should nevertheless be struck if the cross-complaint is irrelevant to the underlying transaction about which plaintiffs brought suit.

Similarly, in *Taliaferro v. Davis*, 211 Cal. App. 2d 229, 230 (1962), the First District upheld a decision to strike a cross-complaint that reasserted tangentially related claims that previous courts had repeatedly rejected. In *Taliaferro*, a defendant cross-complained for recovery from his former wife to offset his liability for default on his tax payments. *Id.* at 229. The court explained that the "theme [of the cross-complaint] apparently is that if his wife had complied with the construction of that [divorce] agreement which he has so often and so unsuccessfully asserted in trial and appellate courts, he would not have defaulted in his taxes in the first place, and thus would not presently suffer this action by the state." *Id.* at 230. The court held that "this sort of reasoning is wholly inconsistent with either the letter or the spirit" of the rules permitting filing of cross-complaints.[3] *Id.* Even after giving "the

[3] The court decided *Taliaferro* according to then-Code of Civil Procedure § 442, which was a precursor to the current provision for filing cross-complaints, § 428.10. At the time *Taliaferro* was decided, § 442 permitted the filing of cross-complaints that sought relief "relating to or depending upon the contract, transaction, matter, happening or accident upon which the action is brought or affecting the property to which the action relates." *See Taliaferro*, 211 Cal. App. 2d at 229 (quoting § 442). Now, § 428.10(b) provides that a defendant may file a cross-complaint against a third party

broadest possible construction" to the rule that cross-complaints must relate to the same transaction at issue in the underlying complaint, the court held that the cross-complaint should have been struck. *Id.*

The State's cross-complaint parallels Mr. Taliaferro's for its irrelevancy and its inconsistency with the letter and spirit of the rule permitting the filing of cross-complaints. Like Mr. Taliaferro, the State reasserts in its cross-complaint a "theme" that it "has so often and so unsuccessfully asserted in trial and appellate courts": that the districts and not the State bear responsibility for educational deprivations plaintiff school children suffer.[4] And just as Mr. Taliaferro's repeatedly rejected claim concerning his wife's divorce settlement duties was irrelevant to the charge that Mr. Taliaferro defaulted on his tax obligations, the State's repeatedly rejected claim that the districts and not the State are responsible for delivering public school education in California is irrelevant to the charge that the State has defaulted on its constitutional obligation to provide education to all California public school children.

"if the cause of action asserted in his cross-complaint (1) arises out of the same transaction, occurrence, or series of transactions or occurrences as the cause brought against him or (2) asserts a claim, right, or interest in the property or controversy which is the subject of the cause brought against him." The Legislative Committee Comment to § 428.10 states that "[s]ubdivision (b) continues the rule (former Code of Civil Procedure Section 442) that a cross-complaint may be asserted against any person, whether or not a party to the action, if the cause of action asserted in the cross-complaint arises out of the same transaction or occurrence or involves the same property or controversy . . . ." § 428.10 (Legislative Committee Comment).

[4] *See, e.g.*, *Salazar II*, 9 Cal. 4th at 858 ("the state has ultimate responsibility for the constitutional operation of its schools"); *Butt*, 4 Cal. 4th at 692 ("The State is the entity with ultimate responsibility for equal operation of the common school system."); *Piper v. Big Pine School Dist.*, 193 Cal. 664, 669 (1924) (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."); *Kennedy v. Miller*, 97 Cal. 429, 431 (1893) ("Article IX of the constitution makes education and the management and control of the public schools a matter of state care and supervision."); *City of El Monte v. Commission on State Mandates*, 83 Cal. App. 4th 266, 278-279 (2000) ("[E]ducation is the ultimate responsibility of the state. The principle is undeniable . . . ."); *California Teachers Assn. v. Hayes*, 5 Cal. App. 4th 1513, 1534 (1992) ("In this state, education is a matter of statewide rather than local or municipal concern."); *Tinsley v. Palo Alto Unified School Dist.*, 91 Cal.App.3d 871, 903 (1979) ("[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.").

II. LOCAL SCHOOL DISTRICTS CANNOT INDEMNIFY THE STATE FOR THE STATE'S FAILURE TO OPERATE AN EFFECTIVE SYSTEM OF STATEWIDE OVERSIGHT AND MANAGEMENT OF THE CALIFORNIA PUBLIC SCHOOL SYSTEM.

At the status conference in front of this Court on December 12, 2000, counsel for the State, struggling for a basis for filing the cross-complaint, analogized the cross-complaint to an action for indemnity. The term "indemnity" never appears in the State's cross-complaint, however, presumably because this is a pure injunction case and the school districts are not liable, as a matter of law, for the State's failure to operate an effective system of oversight and accountability. The cross-complaint might have made sense if the school children had sued the State and State agencies for damages. But plaintiffs have merely asked the State to set up and operate the system of oversight and accountability it is constitutionally required to operate; the districts cannot indemnify the State for a nonmonetary obligation that rests solely with the State itself.

Even if the State and State agencies could tenably seek indemnity in this case, indemnification should be denied. Indemnification "is an equitable rule created to correct potential injustice" and therefore "is not available where it would operate against public policy." *Platt v. Coldwell Banker Residential Real Estate Services*, 217 Cal. App. 3d 1439, 1444-45 (1990); *see also Woodward-Gizienski & Associates v. Geotechnical Exploration, Inc.*, 208 Cal. App. 3d 64, 67 (1989). California's public policy to hold the State ultimately liable for the constitutional delivery of education, regardless of district fault, could not be any clearer. "California constitutional principles require State assistance to correct basic 'interdistrict' disparities in the system of common schools, even when the discriminatory effect was not produced by the purposeful conduct of the State or its agents." *Butt*, 4 Cal. 4th at 681. No entity other than the State bears responsibility for delivering education in California. *Hall v. City of Taft*, 47 Cal. 2d 177, 181 (1956) (Education "'is in a sense exclusively the function of the state which cannot be delegated to any other agency.'") (quoting *Piper v. Big Pine School Dist.*, 193 Cal. 664, 669 (1924)); *see also Butt*, 4 Cal. 4th at 681 ("the State's ultimate responsibility for public education cannot be delegated to any other entity"). To the extent that school districts have any responsibility for education, they do so as agents of the State and not as independent or separate actors. *San Francisco Unified School District v. Johnson*, 3 Cal. 3d 937, 952

(1971) ("To carry out this responsibility [for education] the state has created local school districts, whose governing boards function as agents of the state."); *see also Kirchmann v. Lake Elsinore Unified School District*, 83 Cal. App. 4th 1098, 1114 (2000), *modified*, 2000 Cal. App. LEXIS 785 ("'Local school districts are agencies of the state and . . . are not distinct and independent bodies politic.'") (quoting *Hayes v. Commission on State Mandates*, 11 Cal. App. 4th 1564 1578-79 n.5 (1992)).

Indemnification is meaningless in the context of the State's obligation to assure equal operation of its schools. The imposition of ultimate responsibility for education in California on the State renders it impossible for the State to be indemnified for a failure to deliver constitutionally required education. Just as in *Munoz v. Davis*, 141 Cal. App. 3d 420, 427 (1983), the court held that an attorney who fails to file a personal injury action within the statute of limitations cannot cross-complain for indemnity from the motorist whose negligence caused the personal injury, the State cannot be indemnified by some entity that is not responsible for the State's failure. Even a wildly negligent or criminally mismanaged school district shares no responsibility for the State's failure to oversee and manage the district's delivery of education, just as a motorist whose negligence causes a plaintiff's injuries shares no responsibility for an attorney's failure to follow basic procedural rules. California courts' repeated insistence that the State cannot delegate its constitutional obligation to provide public school education on an equal basis to all California public school children, *Butt*, 4 Cal. 4th at 681; *Hall*, 47 Cal. 2d at 181; *Piper*, 193 Cal. at 669; *California Teachers Association v. Hayes*, 5 Cal. App. 4th 1513, 1524 (1992), renders indemnity for its failures categorically unavailable to the State. *See Munoz*, 141 Cal. App. 3d at 425 ("there can be no indemnity without liability").

Indeed, were the State entitled to proceed on its cross-complaint, *Butt* should have come out the other way. *Butt* concerned the threatened closure of an entire district's schools that resulted from the district's mismanagement of educational funds. 4 Cal. 4th at 679-80. Nonetheless, the *Butt* court explicitly rejected the State's argument that the State should be permitted to duck its ultimate responsibility by assigning away that responsibility to the school districts, holding that "[t]he State itself bears the ultimate authority and responsibility to ensure that its district-based system of common schools provides basic equality of educational opportunity." *Id.* at 685. The *Butt* court

decided that even where district fault immediately caused the educational deprivation at issue in *Butt*, the State was obligated to ensure the delivery of education to all California public school children, including those children whose districts had failed them. *Id.* And rather than providing for some form of district indemnification of the State, the *Butt* court described particular ways the State might instead effectively manage and oversee failing districts: "The State is constitutionally free to legislate against any recurrence of the Richmond crisis. It may further tighten budgetary oversight, impose prudent, nondiscriminatory conditions on emergency State aid, and authorize intervention by State education officials to stabilize the management of local districts whose imprudent policies have threatened their fiscal integrity." 4 Cal. 4th at 691.

The *Butt* court's admonition applies here. It cannot be the case that the State, in lieu of a genuine system of accountability and oversight, can fulfill its constitutional duty to assure the delivery of such essentials as books, trained teachers, and seats in classrooms, by suing the districts it has created. If the State may cross-complain against districts in this suit, and hold districts liable to the State (from which districts obtain some 60% of their funds)[5] for costs of the litigation, then the State will have crafted an unusual and inefficient system of oversight indeed. The State's system will, instead of following traditional and effective principles of oversight and management, become one of responding to lawsuits from tenacious students by filing its own suits. In addition, the system will transfer oversight of the system of public education away from the State itself and into the judicial arena, asking the courts to be the ultimate arbiter for whether each California public school child receives the education to which he or she is constitutionally entitled. Such a system of hauling districts into court of course does not involve ongoing oversight because the State waits for its children to bring failures to its attention and the system of course does not involve management because the State shirks its responsibility altogether by immediately instituting legal action against, rather than administrative and/or legislative monitoring and control over, its school districts.

The inherent insufficiency of the State's system of litigation in place of oversight further supports striking the State's cross-complaint for indemnity from the school districts. Where an

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[5] *See* Complaint ¶ 6, which sets forth the degree to which the State controls districts' operation of schools.

alternative means of apportioning fault and liability exists, resort to indemnification is inappropriate: "Since indemnification is an equitable doctrine existing only to correct potential injustice, it has no utility where there is no such potential." *Jaffe v. Huxley Architecture*, 200 Cal. App. 3d 1188, 1192 (1988). In *Jaffe*, the court considered whether developers sued by a homeowners association could cross-complain for indemnification from members of the association's board of directors. *Id.* at 1191. The court noted that "[s]ince the acts and omissions by the board which the Developers claim exacerbated the original defects were, in legal effect, the acts of the Association itself," the developers could assign fault to the directors as agents of the association without seeking indemnity through cross-complaints. *Id.* at 1192. The court concluded that "fairness to the Developers in this case does not depend on the availability of equitable indemnification. An apportionment of their culpability with regard to the acts and omissions of the board could be accomplished without the use of that doctrine and without suit being filed against the individual board members." *Id.* Just as in *Jaffe* fairness could be achieved without resort to litigation through cross-complaints, here the State has — as defined for it nearly ten years ago in *Butt* — nonlitigation recourse against recalcitrant districts. Thus, this Court should hold, as the *Jaffe* court did, that "[s]ince equitable indemnification exists to allow a fair distribution of liability, the concept is unwise and unnecessary . . . when, as here, the relationship between the parties alone will, in the resolution of the lawsuit, result in the apportionment to defendant of only that liability for which he is responsible." *Id.* at 1190.

Rather than becoming mired in unwieldy and ultimately pointless litigation with potentially hundreds of school districts as unnecessary cross-defendants in litigation concerning not the school districts' but the State's constitutional obligations, this Court should strike the State's cross-complaint and direct litigation to proceed concerning the basic questions why the State has failed to oversee public school education and what the State intends to do to rectify its failure.

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