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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 CITY AND COUNTY OF SAN FRANCISCO  
10

11 ELIEZER WILLIAMS, et al., ) Case No. 312 236  
12 )  
Plaintiffs, ) Hearing Date: February 8, 2001  
13 )  
vs. ) Time: 8:30 a.m.  
14 )  
STATE OF CALIFORNIA, DELAINE ) Department: 414  
15 EASTIN, State Superintendent )  
Of Public Instruction, STATE ) Judge: Hon. Peter J. Busch  
16 DEPARTMENT OF EDUCATION, STATE)  
17 BOARD OF EDUCATION, )  
18 Defendants. )

19 )  
STATE OF CALIFORNIA, )  
20 )  
Cross-Complainant, )  
21 )  
vs. )  
22 )  
SAN FRANCISCO UNIFIED SCHOOL )  
23 DISTRICT, et al., )  
24 )  
Cross-Defendants. )  
25 )

26 MEMORANDUM OF DEFENDANT STATE OF CALIFORNIA  
27 IN OPPOSITION TO MOTION TO STRIKE CROSS-COMPLAINT  
28

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1 MEMORANDUM OF DEFENDANT STATE OF CALIFORNIA  
2 IN OPPOSITION TO MOTION TO STRIKE CROSS-COMPLAINT  
3

4 The State's cross-complaint alleges that, if students  
5 in any school district are receiving a constitutionally  
6 inadequate education (as plaintiffs allege), the relevant  
7 district should take steps to remedy the problem. The cross-  
8 complaint expressly alleges that each school district possesses  
9 the authority and ability to fix the problems alleged, but has  
10 not done so. Cross-complaint ¶¶ 30, 41, etc.

11 Plaintiffs do not deny that the State is entitled to  
12 the relief sought in the cross-complaint. Indeed plaintiffs  
13 could hardly argue otherwise, given plaintiffs' position that the  
14 State has "ultimate" responsibility to ensure every student in  
15 California a constitutionally adequate education. Plaintiffs'  
16 Motion to Strike Cross-Complaint ("Motion") 1:5-6. If that is  
17 the State's responsibility, then self-evidently the State is  
18 entitled to fulfill its responsibility by requiring school  
19 districts to fix conditions that are within their power to fix.  
20 That is what the State has done.

21 The only question on this motion, accordingly, is  
22 whether the State may file its lawsuit as a cross-complaint in  
23 this action, or whether it is required to file it as an  
24 independent action. Plaintiffs argue that the cross-complaint  
25 should be stricken because it is "irrelevant" to plaintiffs'  
26 theories, because it will complicate this action, and because it  
27 will add new issues. For nearly 40 years, the law of California  
28 has been clear that such arguments do not allow striking a cross-

1 complaint. Rather, if a cross-complaint complies with C.C.P. §  
2 428.10, it may be filed -- however much it complicates the  
3 action, and however many new issues it adds. If problems arise,  
4 the Court may deal with them by using its general case management  
5 powers, but not by striking the pleadings.

6  
7 **I. THE COURT MAY NOT STRIKE THE STATE'S CROSS-COMPLAINT**  
8 **SINCE IT MEETS THE REQUIREMENTS OF C.C.P. § 428.10.**

9 A. The Cross-Complaint Arises From the Same  
10 Transaction or Occurrence as the Complaint.

11 Section 428.10 of the Code of Civil Procedure provides  
12 as follows:

13  
14 A party against whom a cause of action has been  
15 asserted in a complaint . . . may file a cross-  
16 complaint setting forth . . . :

17 (b) Any cause of action he has against a person  
18 alleged to be liable thereon, whether or not such  
19 person is already a party to the action, if the cause  
20 of action asserted in his cross-complaint (1) arises  
21 out of the same transaction, occurrence, or series of  
22 transactions or occurrences as the cause brought  
23 against him . . . .

24  
25 The complaint alleges clearly that each plaintiff was  
26 deprived of a constitutionally adequate education as a result of  
27 conditions that supposedly prevail in their respective schools.  
28 Thirty-seven pages, most of the complaint, describe those  
conditions. Complaint 25-62. For each cause of action,  
plaintiffs' charging allegations specify that the constitutional  
violation is the failure, at the school level, to provide

1 plaintiffs a constitutionally adequate education.<sup>1</sup> Hence,  
2 resolution of this case will require determining: (1) whether the  
3 conditions alleged at plaintiffs' schools actually exist; and (2)  
4 if they do, whether such conditions rise to the level of  
5 depriving plaintiffs of a constitutionally adequate education.  
6 If plaintiffs cannot prove both the facts they allege and that  
7 those facts deprived them of a constitutionally adequate  
8 education, plaintiffs will obtain no relief, and their complaint  
9 will be dismissed.

10           The cross-complaint arises out of exactly the same  
11 series of facts and events. It alleges that if plaintiffs have  
12 failed to receive a constitutionally adequate education, the  
13 districts have the power and ability to fix the problems, and the  
14 districts should be ordered to do so. Plaintiffs' proof of their  
15 own case will thus necessarily prove the factual matters that are  
16 the basis of the State's cross-complaint. The complaint and the  
17 cross-complaint thus "arise[] out of the same transaction,  
18 occurrence, or series of transactions or occurrences," C.C.P. §  
19 428.10, and the cross-complaint was properly filed. Time for  
20 Living, Inc. v. Guy Hatfield Homes, 230 Cal. App. 3d 30, 38  
21 (1991) (cross-complaint is transactionally related to complaint  
22 where it alleges that the "precise problems" claimed by

---

23           <sup>1</sup> Thus plaintiffs allege that defendants have deprived  
24 plaintiffs of equal protection "by failing to provide [them] with  
25 basic educational opportunities equal to those that children in  
26 other schools receive," Complaint ¶ 300, that defendants have  
27 violated the common schools clause by denying them "the  
28 opportunity to obtain a basic education in [their] schools . . .  
in that the schools . . . lack one or a combination of the bare  
essentials of an education," Id. ¶ 302, that defendants have  
denied them due process by "depriving [plaintiffs] of basic  
educational opportunities," Id. ¶ 310, and similarly for the  
other causes of action.

1 plaintiffs were at least partly attributable to cross-defendant's  
2 actions).

3 Cases that have interpreted the "same transaction,  
4 occurrence, or series of transactions or occurrences" language  
5 support this conclusion.<sup>2</sup> They hold that by this phrase the  
6 Legislature intended to adopt the "logical relation" test -- the  
7 broad construction which the federal courts have given to the  
8 similar language of Rule 13(a), F.R.Civ.P. Currie Medical  
9 Specialties, Inc. v. Bowen, 136 Cal. App. 3d 774, 777 (1982);  
10 Ranchers Bank v. Pressman, 19 Cal. App. 3d 612, 620 (1971);  
11 Saunders v. New Capital for Small Businesses, Inc., 231 Cal. App.  
12 2d 324, 336 (1964); see United Artists Corp. v. Masterpiece  
13 Productions, 221 F.2d 213 (2d Cir. 1955). "The California courts  
14 have adopted the expansive logical relation test of United  
15 Artists." Currie, 136 Cal. App. 3d at 777. "At the heart of the  
16 approach is the question of duplication of time and effort; i.e.,  
17 are any factual and legal issues relevant to both claims? . . .  
18 [Such] overlap of issues satisfies the logical relation approach  
19 to the transaction or occurrence test." Id.

20 There can be no question that there is "overlap of  
21 issues" here, so that the logical relation test is satisfied.  
22 The factual and legal issues about what is happening at  
23 plaintiffs' schools are common both to plaintiffs' complaint and

24 <sup>2</sup> These cases arise under C.C.P. § 426.10, which relates to  
25 compulsory cross-complaints, but which contains the identical  
26 language as C.C.P. § 428.10. The two statutes were enacted at  
27 the same time, as part of the comprehensive 1971 revision,  
28 proposed by the Law Revision Commission, of the statutes  
governing cross-complaints. The inference is overwhelming that  
the Legislature intended identical language to have the same  
meaning in both statutes.



1 to the State's cross-complaint. Indeed, those issues are  
2 critically important to both pleadings. Allowing the cross-  
3 complaint will thus promote judicial economy and efficiency,  
4 while handling the State's allegations in a separate lawsuit  
5 would result in duplicative litigation and a waste of time and  
6 effort. It follows that the cross-complaint arises from the same  
7 transaction or occurrence as the complaint, and under the plain  
8 language of C.C.P. § 428.10 it may be filed.

9  
10 B. A Cross-Complaint May Not Be Stricken Because  
11 Plaintiffs Say It Will Complicate the Issues.

12 The foregoing discussion shows that the cross-complaint  
13 will not in fact raise new issues: the cross-complaint will  
14 involve no more factual and legal investigation than will be  
15 required in any event to resolve plaintiffs' complaint. But even  
16 if plaintiffs were right that the cross-complaint greatly  
17 expanded the issues, a cross-complaint may not be stricken on the  
18 ground that it will complicate the case or raise issues beyond  
19 the ones which the plaintiff has chosen. American Motorcycle  
20 Ass'n v. Superior Court, 20 Cal. 3d 578, 605-06 (1978); Roylance  
21 v. Doelger, 57 Cal. 2d 255, 261-62 (1962); Linday v. American  
22 President Lines, Ltd., 214 Cal. App. 2d 146, 149 (1963); Simon  
23 Hardware Co. v. Pacific Tire & Rubber Co., 199 Cal. App. 2d 616  
24 (1962).

25 In Roylance, the trial court struck a cross-complaint  
26 on the ground that the issues raised in the cross-complaint were  
27 "much more complicated" than those on the original complaint. 57  
28 Cal. 2d at 259. The Supreme Court reversed:

1 [C]ross-defendant's argument that the issues  
2 tendered by the cross-complaint are "much more  
3 complicated than those raised by the pleadings as  
4 between plaintiff and defendant . . . is, of course,  
5 met by the provisions of section 1048 of the Code of  
6 Civil Procedure. . . [W]e hold that the proper  
7 procedure is to permit and sustain filing of the cross-  
8 complaint under circumstances falling within the  
9 language of section 442 [now 428.10], but to allow the  
10 trial court to determine under the provisions of  
11 section 1048 whether the issues tendered by the  
12 complaint and the answer thereto shall be tried  
13 together with those raised by the cross-complaint, or  
14 shall be severed. 57 Cal. 2d at 261-62.

9 The next case was Linday, where a shipowner, sued by an  
10 employee assaulted by a fellow-seaman, filed a cross-complaint  
11 against the attacker. The trial court struck the cross-  
12 complaint, and the Court of Appeal reversed:

14 [R]ecent California cases construing Code of Civil  
15 Procedure, section 442, have clearly established that  
16 the trial court has no absolute discretion to strike a  
17 cross-complaint which fulfills the requirements of that  
18 section. In Roylance v. Doelger (1962) 57 Cal. 2d 255,  
19 . . . our Supreme Court expressly rejected the argument  
20 that the trial court was entitled to strike a cross-  
21 complaint which raised much more complicated issues  
22 than those raised by the complaint and answer. The  
23 court concluded that the cross-complaint fulfilled all  
24 of the requirements of the Code of Civil Procedure,  
25 section 442, and accordingly ought not to have been  
26 stricken, pointing out that in the event the trial  
27 court determined that the issues raised by the cross-  
28 complaint should be tried separately from those raised  
by the complaint and answer, the proper procedure was  
to sever the action pursuant to [C.C.P. § 1048]. 214  
Cal. App. 2d at 149.

24 The Supreme Court returned to this issue in American  
25 Motorcycle, where the issue was whether the Court's then-new  
26 doctrine of comparative equitable indemnity would result in  
27 cross-complaints in every action for personal injury, greatly  
28

1 complicating all such actions beyond the plaintiff-defendant  
2 issues presented in the original complaint. Relying on its  
3 decision in Roylance, the Court held that cross-complaints were  
4 permitted, regardless of their potential complication of the  
5 proceedings:

6  
7 Although real parties in interest claim that the  
8 effect of permitting a defendant to bring in parties  
9 whom the plaintiff has declined to join will have the  
10 undesirable effect of greatly complicating personal  
11 injury litigation and will deprive plaintiff of the  
12 asserted "right" to control the size and scope of the  
13 proceeding, as our court observed in Roylance (57 Cal.  
14 2d at pp. 261-262), to the extent that such claims are  
15 legitimate the problem may be partially obviated by the  
16 trial court's judicious use of the authority afforded  
17 by Code of Civil Procedure section 1048. 20 Cal. 3d at  
18 606.

19  
20 These cases show plainly that plaintiffs' entire  
21 argument is wrong. Contrary to what plaintiffs claim, a cross-  
22 complaint may not be stricken because it introduces "irrelevant"  
23 matter, or expands the issues, or contravenes plaintiffs' theory  
24 of the case. Under California law, the proper response to new  
25 pleadings that arguably or actually complicate a case is not to  
26 strike the pleadings, but to use the Court's powers under C.C.P.  
27 § 1048 to solve any problems that may arise. This case is no  
28 different.

29  
30 Plaintiffs cite only two cases, which are easily  
31 distinguishable on their facts. El Monte School Dist. v.  
32 Wilkins, 177 Cal. App. 2d 47 (1960); Taliaferro v. Davis, 211  
33 Cal. App. 2d 229 (1962); Motion 8-9.<sup>3</sup> Both pre-date the

34  
35 <sup>3</sup> El Monte was a condemnation case; the decision rests on  
36 the idea that the "transaction" clause of what is now C.C.P. §  
37 428.10(b)(1) "is not applicable to a condemnation proceeding, for

1 decisions in Roylance, Linday, and American Motorcycle, and, to  
2 the extent inconsistent with those decisions, do not survive  
3 them.

4 Nor is there anything to plaintiffs' arguments that the  
5 cross-complaint should be stricken because it will not absolve  
6 the State from liability, or because the State's duty is non-  
7 delegable. Motion 2-3, 3:16-24, 10-13. Cross-complaints do not  
8 generally absolve defendants from liability; instead their  
9 purpose is to bring into the case those who may share  
10 responsibility, if what plaintiff says is true. That is the case  
11 here. And situations of non-delegable duties routinely result in  
12 cross-complaints for indemnity.<sup>4</sup> The cross-complaint here is  
13 not, strictly speaking, one for indemnity, but an exercise of the  
14 State's authority to require districts to provide  
15 constitutionally adequate educations. Nevertheless the State's  
16 cross-complaint is directly analogous to a cross-complaint  
17 seeking indemnity, and the cases cited show the State's cross-  
18 complaint is proper.

---

19  
20 no transaction or other subject matter is involved in such a  
21 proceeding." 177 Cal. App. 2d 52; see People v. Buellton  
22 Development Co., 58 Cal. App. 2d 178, 183 (1943). Obviously this  
23 rule is peculiar to condemnation cases and cannot help plaintiffs  
24 here.

25 Taliaferro held that a cross-complaint which (unlike this  
26 one) had no factual or legal issues in common with the complaint  
27 was properly stricken because it did not meet the "same  
28 transaction or occurrence" test; it is not authority for striking  
a cross-complaint on grounds of "irrelevancy" where, as here, the  
cross-complaint satisfies § 428.10(b).

<sup>4</sup> Seeley v. Seymour, 190 Cal. App. 3d 844, 862-64 (1987);  
Klein v. Leatherman, 270 Cal. App. 2d 792, 796 (1969); City &  
County of San Francisco v. Ho Sing, 51 Cal. 2d 127, 138 (1958);  
Ellison v. Shell Oil Co., 882 F.2d 349, 353-54 (9th Cir. 1989)  
(California law); Great American Ins. Co. v. Evans, 269 F. Supp.  
151, 157-58 (N.D.Cal. 1967) (same).

1    **II. NO STATUTE PERMITS PLAINTIFFS' MOTION.**

2           A separate and independent ground for denying  
3 plaintiffs' motion is that none of the statutes on which  
4 plaintiffs rely authorizes the filing of the motion.

5  
6           A.    C.C.P. § 436(a) Does Not Authorize a Motion to  
7                   Strike an Entire Pleading.

8           Plaintiffs' principal reliance is on C.C.P. § 436(a).  
9 But that statute does not say, as plaintiffs represent, that  
10 irrelevant "pleadings" may be stricken, Motion 2:4, but rather  
11 that the court may strike out "irrelevant, false, or improper  
12 matter inserted in any pleading" (emphasis added). This language  
13 is inconsistent on its face with plaintiffs' effort to use the  
14 statute to strike an entire pleading. They cite no case that  
15 suggests, let alone holds, that the statute may be used for such  
16 a purpose.

17           On the contrary, C.C.P. § 431.10 shows that "irrelevant  
18 matter" cannot mean an entire pleading, but instead refers to  
19 material within a pleading which is irrelevant to the cause of  
20 action alleged. § 431.10 states that "[a]n 'immaterial  
21 allegation' means 'irrelevant matter' as that term is used in  
22 Section 436," and defines "immaterial allegation" as follows:

- 23  
24           (b) An immaterial allegation is any of the following:
- 25               (1) An allegation that is not essential to the  
                claim or defense.
  - 26               (2) An allegation that is neither pertinent to  
27               nor supported by an otherwise sufficient claim or  
                defense.
  - 28               (3) A demand for judgment requesting relief not

1 supported by the allegations of the complaint or cross-  
2 complaint.

3 One need only read this definition to see that what  
4 plaintiffs are moving to strike -- an entire cross-complaint --  
5 cannot possibly constitute "an immaterial allegation" under  
6 §431.10. Therefore it cannot constitute "irrelevant matter" for  
7 purposes of § 436(a) either.<sup>5</sup> Plaintiffs do not seek to strike  
8 inessential allegations or impertinent matter; they seek to  
9 strike the cross-complaint in its entirety. Section 436(a) may  
10 not be used for such a purpose.

11  
12 B. No Court Order Forbade Filing the Cross-Complaint.

13 Equally unavailing is plaintiffs' reliance on C.C.P. §  
14 436(b). That section allows the Court to strike a pleading that  
15 was filed in violation of a court order. Plaintiffs rely on the  
16 Court's Order of November 14, 2000. That Order overruled the  
17 State's demurrer based on exhaustion of administrative remedies,  
18 on the ground that exhaustion would not eliminate the possibility  
19 that, if plaintiffs proved their allegations, the State might owe  
20 them some duty.

21 But neither by its terms nor by implication did the  
22 Order forbid the filing of a cross-complaint. The Order contains  
23 not a word about cross-complaints; it contains not a word about  
24 what pleadings may be filed; it contains not a word that  
25 restricts the State's ability to defend itself, or to raise new  
26 issues or add new parties, consistent with the requirements of

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27 <sup>5</sup> The two provisions were enacted at the same time in the  
28 same statute, Stats. 1982, Ch. 704, §§ 2, 3.5, and obviously must  
be read together.

1 the law and the Code of Civil Procedure. Moreover, given  
2 Roylance, Linday, and American Motorcycle, an order restricting  
3 the State's right to file a cross-complaint would have been in  
4 excess of the Court's authority; if a court may not strike a  
5 cross-complaint, as those cases hold, it may not order in advance  
6 that the same cross-complaint not be filed. But for present  
7 purposes it is sufficient that the Court's order did not even  
8 purport to bar a cross-complaint.

9 More fundamentally, the Court's Order of November 14,  
10 2000, was made on demurrer, and as such the Court was required to  
11 assume the truth of plaintiffs' allegations. The Order expressly  
12 stated that the Court was making no determination of those  
13 factual issues. The Court did not free plaintiffs from the  
14 burden of proving their allegations, nor did it bar defendants  
15 from rebutting those allegations. Contrary to plaintiffs'  
16 arguments, the Order did not magically vaporize all factual and  
17 legal issues about whether plaintiffs are, in fact, receiving a  
18 constitutionally adequate education. And it did not prevent the  
19 State from filing a cross-complaint that relates directly and  
20 essentially to those very same issues.

21  
22 C. Plaintiffs May Not File a Motion Under C.C.P. §  
23 435 Since They Are Not Entitled to Respond to the  
24 Cross-Complaint.

25 C.C.P. § 435 allows a party to file a motion to strike  
26 only "within the time allowed to respond to a pleading." But  
27 plaintiffs are not parties to the cross-complaint; they have no  
28 right to respond to it at any time. Their motion thus was not

1 filed within the time plaintiffs were "allowed" to respond to the  
2 cross-complaint. It follows that § 435 does not authorize their  
3 motion.

4 Any doubt on this point is answered by the legislative  
5 history of § 435. The statute was first made applicable to  
6 cross-complaints as part of the general 1971 revision of the  
7 procedures concerning cross-complaints. Stats. 1971, Ch. 244 §  
8 33. The relevant language then read that a party could make a  
9 motion to strike only "within the time **he is** allowed to answer a  
10 [cross-complaint]." Id. (emphasis added) This language makes  
11 unmistakable that a motion to strike a pleading may be made only  
12 by a party entitled to respond to that pleading. The present  
13 statutory language was adopted in 1982; presumably for the  
14 purpose of eliminating sexist language, it dropped the words "he  
15 is." Stats. 1982, Ch. 704 § 3. But there is no evidence the  
16 Legislature intended a substantive change. It follows that  
17 plaintiffs may not rely on § 435 as authorizing their motion to  
18 strike.

19  
20 **III. PLAINTIFFS MISREPRESENT THE APPLICABLE LAW.**

21 What has been said is sufficient to dispose of the  
22 motion before the Court. But much of plaintiffs' argument, even  
23 though addressed to matters not really pertinent to this motion,  
24 rests on misconceptions about this case so fundamental that the  
25 Court may find useful a brief summary of the State's views.

26 First. Plaintiffs rely on cases that say that the  
27 State has "ultimate" responsibility for the public school system  
28 (which is not disputed), but plaintiffs radically distort what



1 those cases actually say. The only cases that matter are Serrano  
2 v. Priest, 18 Cal. 3d 728 (1976), and Butt v. State of  
3 California, 4 Cal. 4th 668 (1992). Serrano held that financing  
4 school districts by means of property tax revenues created  
5 unconstitutional disparities among school districts. Butt held  
6 that when the Richmond school district ran out of money and had  
7 to shut down six weeks early, that created an unconstitutional  
8 disparity between the education provided in Richmond and that  
9 provided elsewhere in California. Thus both cases involved  
10 interdistrict disparities; and both involved situations where the  
11 individual district had neither the authority nor the power to  
12 fix the problem. No individual district could have changed the  
13 property-tax system of school finance; the Richmond district had  
14 no money to provide the extra six weeks of school, and could not  
15 have done so even if so ordered. Accordingly neither case  
16 supplies any authority for the proposition that State agencies  
17 have a duty to intervene when local school districts have the  
18 power and authority to cure problems. Plaintiffs say that  
19 "instead of seeking to force the State to act only if and where  
20 the districts fail, this lawsuit seeks to force the State to act,  
21 period." Motion at 4:19-20. That may be what plaintiffs seek.  
22 But they cite no case holding that the State has any such duty,  
23 and there is none. The only duty that Serrano and Butt impose on  
24 the State is to remedy those unconstitutional educational  
25 conditions that local districts have no power to fix.

26 Second. In Butt, the Supreme Court made clear that a  
27 constitutional violation requires proof that public school  
28

1 students are receiving a constitutionally inadequate education.  
2 As the Supreme Court said:

3 [P]rinciples of equal protection have never required  
4 the State to remedy all ills or eliminate all variances  
5 in service. . . . A finding of constitutional  
6 disparity depends on the individual facts. Unless the  
7 actual quality of the district's program, viewed as a  
8 whole, falls fundamentally below prevailing statewide  
9 standards, **no constitutional violation occurs**. 4 Cal.  
10 4th at 686-87 (emphasis added).

11 Plaintiffs' theories contradict this clear delineation  
12 of the limited scope of the State's duty in at least three ways.  
13 First, plaintiffs base their case not on interdistrict  
14 disparities, which an individual district cannot cure, but on  
15 interschool (or even interstudent) disparities, which an  
16 individual district generally can cure. Second, plaintiffs say  
17 the State has a constitutional duty to provide oversight and  
18 monitoring even in the absence of proof that individual students  
19 are receiving a constitutionally inadequate education, Motion  
20 1:23 -- a proposition directly contrary to the language quoted  
21 from Butt, and not supported by any authority. Third, plaintiffs  
22 say a court must require intervention by State agencies even when  
23 the Legislature has given responsibility to local districts and  
24 even when the local district has the power and the ability to  
25 solve the problem, Motion at 3:15-19, 4:19-24, a proposition for  
26 which there is no support in Butt, Serrano, or any other case.

27 Third. Because for constitutional purposes the  
28 districts are the agent of the State, the actions of local  
districts are the actions of the State for constitutional  
purposes; and a local district which provides a constitutionally

1 adequate education has fulfilled the State's constitutional duty.  
2 That is the meaning of the proposition stated in Butt and other  
3 cases that the State has ultimate responsibility for education,  
4 but that the Legislature may properly delegate to the districts  
5 responsibility for carrying out the State's duty; and it is the  
6 only way to reconcile the constitutional theory that districts  
7 are the State's agents with the practical reality that executive  
8 officers of the State have only limited statutory powers to  
9 compel districts to act. If plaintiffs ever showed that they  
10 were entitled to some relief here, accordingly, for purposes of  
11 the Constitution a remedial order directed to a local district  
12 would constitute relief "against the State" just as much as an  
13 order directed to a State agency. Given the constitutional  
14 theory by which districts form part of the State for purposes of  
15 the State's duty to provide an adequate education, it is  
16 eminently reasonable that districts as well as State agencies  
17 should be before the Court.

18

19 **CONCLUSION.**

20 For the reasons stated, plaintiffs' motion to strike  
21 the cross-complaint should be denied.

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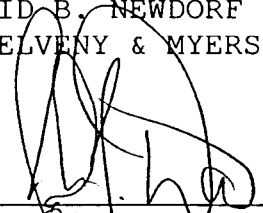
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