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Deputy Clerk

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' REPLY IN SUPPORT OF MOTION TO STRIKE

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

1 STATE OF CALIFORNIA,

2 Cross Complainant,

3 v.

4 SAN FRANCISCO UNIFIED SCHOOL
5 DISTRICT, a school district, WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, a
6 school district, OAKLAND UNIFIED SCHOOL DISTRICT, a school district, RAVENSWOOD
7 CITY ELEMENTARY SCHOOL DISTRICT, a school district, CAMPBELL UNION
8 ELEMENTARY SCHOOL DISTRICT, a school district, CLOVERDALE UNIFIED SCHOOL
9 DISTRICT, PIONEER UNION ELEMENTARY SCHOOL DISTRICT, a school district, PAJARO
10 VALLEY UNIFIED SCHOOL DISTRICT, a school district, FRESNO UNIFIED SCHOOL
11 DISTRICT, a school district, VISALIA UNIFIED SCHOOL DISTRICT, a school district,
12 MERCED CITY ELEMENTARY SCHOOL DISTRICT, a school district, ALHAMBRA CITY
13 HIGH SCHOOL DISTRICT, a school district, ALHAMBRA CITY HIGH SCHOOL
14 DISTRICT, a school district, LOS ANGELES UNIFIED SCHOOL DISTRICT, a school district,
15 MONTEBELLO UNIFIED SCHOOL DISTRICT, a school district, LYNWOOD
16 UNIFIED SCHOOL DISTRICT, a school district, INGLEWOOD UNIFIED SCHOOL DISTRICT,
17 a school district, LONG BEACH UNIFIED SCHOOL DISTRICT, a school district

18 Cross-Defendants.

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INTRODUCTION

The State's opposition to plaintiffs' motion to strike the cross-complaint only further underscores the irrelevance of the cross-complaint to this litigation. Indeed, the State's opposition, like the cross-complaint itself, distorts the theory of plaintiffs' complaint, the case law on which that complaint depends, and this Court's Order. Most compelling for purposes of striking the cross-complaint, however, is the State's revelation of its position that it is not constitutionally obliged to oversee and manage the statewide system of public education at all unless and until a lawsuit reveals the existence of a constitutional violation. Memorandum of Defendant State of California in Opposition to Motion to Strike Cross-Complaint ("Opposition") at 14 (disclaiming any "constitutional duty to provide oversight and monitoring . . . in the absence of proof that individual students are receiving a constitutionally inadequate education").[1] Not only does the very filing of the cross-complaint unmask the truth that the State has no oversight system already in place, but the State's opposition to our motion to strike further proves that the State does not accept its constitutional duty to operate such an oversight system to prevent and correct the constitutional violations plaintiff school children suffer. The cross-complaint, which nowhere addresses this question of State oversight, is therefore categorically irrelevant to this case.

As we show, the cross-complaint reflects an unsubtle attempt to remove the basis of our complaint and substitute in its place a different case having nothing to do with ensuring for now and into the future that the State superintends the delivery of basic educational necessities to all its children. The State attempts to manufacture the relevance of its cross-complaint to this litigation by asserting that "self-evidently" it "is entitled to fulfill its [ultimate] responsibility by requiring school districts to fix conditions that are within their power to fix."[2] Opposition at 1. But this case does not concern piecemeal resolution of "the specific deficiencies suffered by these students at their specific

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[1] The State repeatedly refers to "adequate" education in its opposition to our motion. We note for the record that we have never referred to adequate education in any papers we have filed. Indeed, our complaint seeks access to "the minimal educational tools" necessary for children to learn. First Amended Complaint ("Complaint") ¶ 6; *see also id.* ¶¶ 7, 16, 293, 326a.

[2] Conveniently, the State argues that it has fulfilled its obligation when its agent districts have provided children with the education to which they are entitled, but it does not accept that it has failed its obligation when districts fail to provide that education. Opposition at 14-15.

schools in their specific school districts." Court's November 14, 2000 Order ("Order") at 2. As this Court has explicitly recognized, this case presents point blank the question of what and how much governance the State — and not its local districts — must provide: "this case will deal with the oversight and management systems the State has in place to determine if they are legally adequate and whether they are being properly implemented." *Id.*

The State's newly minted strategy of waiting for lawsuits from students and responding with cross-complaints against the students' school districts is no substitute for a constitutionally sufficient system to superintend and oversee California's public education system. Assignment to the State of ultimate responsibility for education requires that the State oversee the system of public instruction to prevent unconstitutional denials of educational opportunity. Thus, the school districts against which the State cross-complained are irrelevant to a determination of the State's educational obligations.[3]

I. THIS COURT SHOULD STRIKE THE CROSS-COMPLAINT

The State expends considerable energy establishing the unremarkable proposition that a cross-complaint that satisfies the statutory requirements for its filing cannot be struck simply because the cross-complaint will complicate the existing litigation. Opposition at 5-8. Plaintiffs have not sought to strike the cross-complaint on the ground that it will complicate the litigation.[4] Instead, plaintiffs

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[3] Remarkably, the State justifies its resort to litigation against its own agents with the observation that "executive officers of the State have only limited statutory powers to compel districts to act." Opposition at 15. First, the State's claim inaccurately represents the law. As the California Supreme Court recognized in *Butt v. State*, 4 Cal. 4th 668, 676 (1992), "the SPI [Superintendent of Public Instruction], by virtue of the State's 'ultimate responsibility' for equal education and his own statutory obligation to 'superintend the schools of this state' (Ed. Code, § 33112, subd. (a)), would have authority" to require local school districts to act to ensure that school children receive the public school education to which they are constitutionally entitled. Moreover, as *Butt* also recognized, even were the law otherwise, the existence or absence of statutory powers is irrelevant. The California Constitution affords the State and its officers "plenary" power over all educational decisions. *Id.* at 681, 688. Indeed, "[t]he State's plenary power over education includes ample means to discourage future mismanagement in the day-to-day operations of local districts." *Id.* at 692. It is precisely the failure of the State to exercise this power that lies at the heart of plaintiffs' complaint, yet the State's cross-complaint treats this power as if it did not exist.

[4] We note that the State concedes that severance is appropriate where litigation of a cross-complaint would complicate litigation already under way. Opposition at 7 ("Under California law, the proper response to new pleadings that arguably or actually complicate a case is . . . to use the Court's [severance] powers under C.C.P. § 1048 to solve any problems that may arise."); *see also id.* at 6 (block quoting cases holding that severance is appropriate). For our part, in our case management conference statement, we proposed that hearings in the case be sequenced, with an

have moved to strike the cross-complaint precisely because it fails to satisfy two essential elements for its filing. First, the cross-complaint is irrelevant because it does not arise out of the same transaction from which plaintiffs' complaint arises. And second, the State's filing of its cross-complaint contravenes an order of this Court explicitly limiting "all stages of the case, including pleading" to what "this case is exclusively about[:] the State's system of oversight and that system's alleged inadequacies and failures." Order at 2; Memorandum of Points and Authorities in Support of Plaintiff's Motion to Strike ("MPA") at 2.

A. The Cross-Complaint Is Irrelevant

The State inexplicably asserts that "a cross-complaint may not be stricken because it introduces 'irrelevant' matter . . . ." Opposition at 7. But as the State itself later acknowledges, California Code of Civil Procedure § 436(a) provides that a Court may "[s]trike out any irrelevant . . . matter." *See* Opposition at 10. Indeed, the requirement that a defendant may file a cross-complaint against third-parties only if the cross-complaint cause of action "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), itself introduces relevance into the question whether a cross-complaint is appropriate in any given litigation.

In its effort to claim that its cross-complaint arises out of the same transaction from which plaintiffs' complaint arises, the State asserts that both "[t]he factual and the legal issues about what is happening at plaintiffs' schools" are common to the complaint and the cross-complaint. Opposition at 4-5. That is incorrect: the legal issues in the complaint and the cross-complaint differ markedly. As we have previously explained, MPA at 1, 4, the complaint seeks to require the State to fulfill its educational obligations by establishing a system of oversight to prevent and correct the conditions plaintiffs suffer. By definition, the school districts the State sued in its cross-complaint cannot in and of themselves establish that system of statewide oversight. The State's own assertion that its cross-complaint's "purpose is to bring into the case those who may share responsibility, if what plaintiff[s]

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initial focus on the State's system of oversight and management, and then subsequently, and only to the extent still necessary, addressing the conditions in particular schools.

say[] is true," Opposition at 8, thus persuasively demonstrates the irrelevance of the cross-complaint to this litigation. No district could share responsibility for the State's failure to fulfill its constitutional obligation to operate a system of oversight for California public schools.[5]

The factual issues in the complaint and the cross-complaint differ as well. The State silently, but tellingly, omitted from its cross-complaint two categories of conditions about which plaintiffs complain: widespread classroom instruction from teachers who lack full, nonemergency teaching credentials and severe overcrowding. Although the State copied from the complaint into its cross-complaint the factual allegations plaintiffs made with respect to every other condition described in the complaint, it deleted from its cross-complaint every reference to the use of undercredentialed teachers and all but one reference to overcrowding. *See* Cross-Complaint ¶ 162 (describing overcrowding at Cahuenga elementary school only).

The cases the State cites actually support striking the cross-complaint as irrelevant. *See* Opposition at 3-4. For example, the cases the State cites as having adopted a "logical relation" test to determine whether a cross-complaint and a complaint arise out of the same transaction require striking the cross-complaint here: the cross-complaint against school districts can have no logical relationship to a case "exclusively" concerning the State's responsibility. *See* Order at 2. Similarly, the holding in *Time For Living, Inc. v. Guy Hatfield Homes*, 230 Cal. App. 3d 30, 38 (1991), that a cross-complaint is properly filed where the cross-complaint alleges the "precise problems" the complaint alleges, justifies striking the cross-complaint from this case. The "precise problems"

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[5] The State notes correctly that courts have permitted defendants to file cross-complaints for indemnity even where the defendants bore nondelegable duties. *See* Opposition at 8 & n.4. In addition to the unavailability of indemnity in this case, *see* MPA at 10, this proposition and the cases supporting it are distinguishable for still another reason. The cases the State cites involved entities that owed "separate but concurrent duties" to the original plaintiffs in the actions, and the courts held that even where one of the defendants owed a nondelegable duty to a plaintiff the defendant could seek indemnification for the separate duties another entity owed the plaintiff. *See id.* Here, by contrast, the State itself acknowledges that the school districts are in no way separate from the State for purposes of constitutional delivery of public education. Opposition at 15. Plaintiffs are aware of no situation — and the State cites none — in which indemnification cross-complaints were filed against entities that existed only at the pleasure of the original defendants and that owed no one a duty distinct or separate from that of the original defendants. *Cf. Butt*, 4 Cal. 4th at 688 ("The Constitution has always vested 'plenary' power over education not in the districts, but in the State, through its legislature, which may create, dissolve, combine, modify, and regulate local districts at pleasure.").

plaintiffs allege are 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." Complaint ¶ 4. The cross-complaint does not, as it could not, allege that the school district cross-defendants are responsible for these problems.[6]

B. The Filing of the Cross-Complaint Contravenes This Court's Order Overruling the Demurrer

In its opposition, the State continues to ignore the Court's November 14, 2000 Order overruling the State's demurrer. The State complains that because "[t]hirty-seven pages, most of the complaint, describe those conditions [under which the plaintiff school children attend school]," Opposition at 2, the State should be permitted to proceed with its cross-complaint against the districts as a method for learning of the existence of the problems in the schools. This argument wholly ignores this Court's explicit ruling that "[t]he specific deficiencies that take up so much of the Complaint are evidence of an alleged breakdown in the State's management of its oversight responsibilities. As such, they are the result, rather than the fact, of the allegedly unconstitutional behavior — the consequential injury, rather than the violation." Order at 2. Similarly, the State's claim that this Court's Order "contains not a word about what pleadings may be filed," Opposition at 10, disregards the Order's limitation of "all stages of the case, including pleading" to "exclusive[]" focus on "the State's system of oversight." Order at 2. Therefore, the cross-complaint, which the State itself concedes "raise[s] new issues," Opposition at 10, is necessarily "not drawn or filed in conformity with . . . an order of the court."[7] § 436(b).

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[6] To the contrary, the cross-complaint alleges that "the State may be required in certain circumstances to act where the [districts] ha[ve] failed," and seeks costs of litigation and an injunction against specific school districts to stop depriving specific students of specific conditions. Cross-complaint ¶¶ 28, 40, 59, 74, 83, 91, 99, 107, 115, 125, 134, 142, 150, 186, 208, 218, 231, 243. *Cf.* Order at 2 ("[T]his case is not about correcting the specific deficiencies suffered by these students at their specific schools in their specific school districts.")

[7] The State attempts to reconstruct its filing as if it were consistent with this Court's Order by arguing that "[t]he Order contains not a word about cross-complaints." Opposition at 10. But plaintiffs have never claimed that this Court's Order, or anything else, categorically bars the State from filing any cross-complaint. Plaintiffs have only argued that both this Court's Order and §§ 428.10(b) and 436(a) bar the State from proceeding with this cross-complaint based on these irrelevant allegations that also contravene this Court's Order. *See* MPA at 8.

II. THIS COURT HAS THE POWER TO STRIKE THE CROSS-COMPLAINT IN ITS ENTIRETY

A. Section 436(a) Authorizes Striking Entire Pleadings

The State advances the illogical argument that because § 436(a) authorizes courts to strike "irrelevant . . . matter inserted in any pleading," the statute cannot authorize courts to strike pleadings in their entirety. Opposition at 9. First, § 436 provides that "[t]he court may, upon a motion made pursuant to Section 435" strike irrelevant matter in a pleading, and § 435, which is titled "Motion to Strike Pleading," provides for the filing of a "motion to strike the whole or any part thereof" of a pleading. Section 435, on which § 436 depends, thus explicitly states that it authorizes motions to strike whole pleadings. Second, if everything in a pleading is irrelevant, then surely the Court can, according to the text of § 436(a), strike everything in the pleading. Having struck everything, the Court must strike the pleading.

The relentless logic of this proposition is supported by the long list of cases — which the State ignores — involving motions to strike cross-complaints in their entirety, none of which balk at a court's ability to strike a cross-complaint.[8] *See, e.g., Price Pfister, Inc. v. William Lyon Co.*, 14 Cal. App. 4th 1643, 1646 (1993) (affirming decision to strike cross-complaint in its entirety); *Loney v. Superior Court*, 160 Cal. App. 3d 719, 724 (1984) (holding that entire cross-complaint was properly stricken). This Court surely has the authority to strike the cross-complaint in its entirety because nothing in the cross-complaint, which concerns local districts' delivery of education, is relevant to the question plaintiffs' complaint raises: whether the State has operated a statewide system of oversight and management to prevent and correct the conditions plaintiff school children suffer.[9] *See*

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[8] The State's reference to the definition in § 431.10 of "irrelevant matter" as synonymous with "immaterial allegation" does not salvage the lack of logic in its argument. In the context of a cross-complaint, the materiality of an allegation must necessarily be defined by reference not only to the claims in the cross-complaint itself but also to the claims in the original complaint. If an allegation in a cross-complaint is immaterial to the allegations in the original complaint, then the cross-complaint could not arise out of the same transaction or occurrence out of which the original complaint arose. *See* § 428.10(b) (providing for the filing of cross-complaints only if the cross-complaints arise out of the same transaction or occurrence as the cause brought in the original action).

[9] Interestingly, the State cites no cases in its argument that § 436(a) does not authorize a motion to strike an entire pleading, but then argues a few pages later that "a court may not strike a cross-complaint, as those cases [*Roylance*, *Linday*, and *American Motorcycle*] hold . . . ." Opposition

1 *Greshko v. County of Los Angeles*, 194 Cal. App. 3d 822, 830 (1987) (courts have authority to strike
2 entire cross-complaints); *Hale v. Laden*, 178 Cal. App. 3d 668, 673 (1986).
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4 **B. Section 435 Does Not Preclude Plaintiffs from Moving to Strike Cross-Complaints.**

5 The State again misreads § 435, which is the statute authorizing motions to strike pleadings,
6 when it argues that plaintiffs cannot move to strike cross-complaints. Section 435(b)(1) provides that
7 "*[a]ny* party, within the time allowed to respond to a pleading may serve and file a notice of motion
8 to strike the whole or any part thereof . . . ." The reference to "[a]ny party" clearly includes plaintiffs.
9 Moreover, § 435 merely refers generically to "the time allowed to respond to a pleading." The
10 calculation of the period during which such a motion may be filed may be keyed to the time for the
11 filing of a responsive pleading, but that does not mean that the only party that can file the motion to
12 strike is the party that would otherwise file a responsive pleading. Thus, contrary to the State's
13 argument, it is immaterial that plaintiffs "have no right to respond to it [the cross-complaint] at any
14 time." Opposition at 11. In sum, the plain language of the provision does not limit the right to file a
15 motion to strike to the party to whom the pleading is directed; rather, any party can file such a motion
16 so long as the motion is filed within the requisite time period.[10]
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21 at 11. Of course, none of those cases held that a court may not strike a cross-complaint for any reason. These cases simply stand for the proposition that "the trial court has no absolute discretion to
22 strike a cross-complaint which fulfills the requirements" of the statutory basis for filing cross-complaints. *Linday v. American President Lines, Ltd.*, 214 Cal. App. 2d 146, 149 (1963); *see also*
23 *Roylance v. Doelger*, 57 Cal. 2d 255, 258 (1962) (deciding "whether under the circumstances defendant is entitled to seek such relief through the medium of a cross-complaint"); *American*
24 *Motorcycle Ass'n v. Superior Court*, 20 Cal. 3d 578, 605-07 (1978) (holding that cross-complaints are not categorically unavailable to defendants who seek indemnity).

25 [10] The legislative history to which the State points does not undermine § 435's plain language.
26 Contrary to the State's suggestion that the current statutory language was adopted "for the purpose of eliminating sexist language," Opposition at 12, in fact, the legislative history demonstrates that the
27 statute was amended to "clarify existing law relating to motions to strike." *See* Memorandum of Assembly Committee on Judiciary [attached as Exhibit A to Declaration of Leecia Welch]. The plain
28 language of § 435, as amended in 1971 and 1982, clearly states that "any party" may file a motion to strike.

C. Even If Section 435 Did Bar Plaintiffs From Moving to Strike the Cross-Complaint, the School Districts' Joinder in the Motion Establishes Standing and This Court Has Inherent and Statutory Authority to Strike Irrelevant Pleadings

On January 29, 2001, four of the school district cross-defendants conditionally joined plaintiffs' motion to strike the cross-complaint. Notice of Conditional Joinder of Cross-Defendants Los Angeles Unified School District, Parrajo Valley Unified School District and Other Cross-Defendants in Plaintiffs' Motion to Strike State's Cross-Complaint at 2. The State's argument concedes that § 435 authorizes a motion to strike from cross-defendants. Opposition at 12. Thus, even if § 435 does not authorize plaintiffs to move to strike a third-party cross-complaint, the school district joinder places this motion squarely before the Court. Moreover, this Court has inherent and statutory authority to strike the cross-complaint, regardless of whether a motion to strike has been filed. *See Hale*, 178 Cal. App. 3d at 673 ("Under this statutorily enumerated [§ 436] power of the court to strike irrelevant matter and the court's inherent power (Code Civ. Proc., § 187) to limit the focus of the proceedings to the issues framed by the remaining viable pleadings, the court did not err in striking the cross-complaint, which, after the good faith determination, became irrelevant to the remaining issues. This ministerial act could be done without notice."); *see also Greshko*, 194 Cal. App. 3d at 830 (quoting *Hale*).

III. THIS COURT SHOULD NOT ALLOW THE STATE TO INTRODUCE IRRELEVANT PARTIES AND ISSUES THROUGH MISCHARACTERIZATIONS OF THIS CASE

The State's strained effort to distinguish *Serrano v. Priest*, 18 Cal. 3d 728 (1976), and *Butt* from plaintiffs' claims in this case tellingly describe why the State believes its irrelevant cross-complaint should be litigated as part of this case. But the State's mischaracterization of the case holdings cannot justify introduction of irrelevant issues into this litigation.

In fact, neither *Butt* nor *Serrano* depended for their holdings on the existence of interdistrict disparities. Certainly both cases involved factual situations in which the educational experiences of children of particular districts were compared against the educational experiences of children in other districts. But both cases decided broadly the question of what and how much oversight obligations the State retained. *Butt* identified "the State's constitutional responsibility for basic equality in the

operation of its common school system." 4 Cal. 4th at 689; *see also id.* at 684 (referring to "the State's ultimate responsibility for maintaining a nondiscriminatory common school system"). The Court did not limit that "basic equality" to comparison between districts, but instead decided the case on the basis of the "real and appreciable impact on the affected students' fundamental California right to basic educational equality." 4 Cal. 4th at 688. And *Serrano*, 18 Cal. 3d at 766, similarly turned on the impairment to "the fundamental interest of the students of this state in education . . . ." These holdings thus pertain to the fundamental right to education belonging to individual children, without regard to the particular districts in which children live. Indeed, as we pointed out in our opposition to the demurrer, the State's crabbed interpretation would drain the essential holding of *Butt* that "access to a public education is a uniquely fundamental personal interest in California." 4 Cal. 4th at 681.

Lest there be any doubt about the broad applicability of these holdings, *Butt* itself rejected the identical argument the State resurrects here that its educational obligations are limited to correction of interdistrict disparities. The *Butt* Court noted that "[t]he State asserts that its financial obligation to equal education is limited to the equalized system of interdistrict funding required by our *Serrano* decisions." *Id.* at 688. But the Court rejected that defense: "Nothing in the *Serrano* cases themselves, or in other California decisions, supports the State's argument." *Id.* The Court held that, "[o]n the contrary, the cases suggest 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. In extreme circumstances at least, the State 'has a duty to intervene to prevent unconstitutional discrimination' at the local level." *Id.* (quoting *Tinsley v. Palo Alto Unified School Dist.*, 91 Cal. App. 3d 871, 904 (1979)).[11]

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[11] Other cases make clear that the State's reading of the scope of its responsibility is incorrect. For example, *Salazar v. Eastin*, 9 Cal. 4th 836, 858 (1995), which involved the constitutionality of particular school districts' decisions to charge students fees for riding the bus to and from school, reaffirmed the *Butt* holding that "the state has ultimate responsibility for the constitutional operation of its schools." Similarly, *Piper v. Big Pine School District of Inyo County*, 193 Cal. 664, 669 (1924), decided that education "is in a sense exclusively the function of the state which cannot be delegated to any other agency" in the context of holding that a school district could not deny an American Indian child access to its schools." *See also id.* at 673 ("To argue that petitioner is eligible to attend a [non-district-operated, tribal] school which may perchance exist in the district, but over which the state has no control, is to beg the question. However efficiently or inefficiently such a school may be conducted would be no concern of the state.").

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CONCLUSION

For the foregoing reasons, this Court should strike the cross-complaint.

Dated: February 2, 2001

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