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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.

Case No. 312236

[CLASS ACTION]

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION TO SEVER AND
STAY PROCEEDINGS**

Hearing Date: April 11, 2001

Time: 8:30 a.m.

Department: 16, Hall of Justice

Judge: Hon. Peter J. Busch

Date Action Filed: May 17, 2000

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STATE OF CALIFORNIA,

Cross-Complainant,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT, a school district, et al.

Cross-Defendants.

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1 INTRODUCTION

2 In denying Plaintiffs’ motion to strike the State’s Cross-Complaint at the February 8, 2001
3 hearing, the Court indicated it could more appropriately respond to the issues raised by the
4 motion to strike through an exercise of its case management powers, including possibly limiting
5 active litigation of the Cross-Complaint. For many of the same reasons articulated by the Court
6 in its denial of the State’s demurrer, Plaintiffs Eliezer Williams, et al., hereby move the Court to
7 exercise its authority under *California Code of Civil Procedure* (“C.C.P.”) § 1048(b) to sever the
8 trial of Defendant State of California’s Cross-Complaint from the trial of Plaintiffs’ action and to
9 stay proceedings on the Cross-Complaint until resolution of Plaintiffs’ First Amended Complaint.

10 The State’s Cross-Complaint raises separate and independent issues from Plaintiffs’
11 complaint that will serve only to complicate and delay resolution of the complaint and the
12 provision of the basic essentials of an education to hundreds of thousands of children. The Court
13 made clear in its Order overruling the State’s demurrer that “this case is exclusively about the
14 State’s system of oversight and that system’s alleged inadequacies and failures.” Order at 2. This
15 Court further recognized that the case’s exclusive focus “will have ramifications to all stages of
16 the case, including pleading, class certification, motion practice, trial, and remedies.” *Id.*
17 Defendant’s Cross-Complaint — like its attempt to force this matter through the inappropriate
18 processes of the *Uniform Complaint Procedure* — does not concern “the State’s system of
19 oversight,” but focuses instead on precisely what this case is *not* about: “correcting the specific
20 deficiencies suffered by these students at their specific schools in their specific school districts.”
21 *Id.*

22 The Court is well within the exercise of its case management powers to prevent the State’s
23 attempt to slip through the back door a completely different case than that framed by Plaintiffs’
24 complaint, not to mention the Court’s own orders. Indeed, the State itself has conceded that
25 “[u]nder California law, the proper response to new pleadings that arguably or actually
26 complicate a case is . . . to use the Court’s [severance] powers under C.C.P. § 1048 to solve any
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1 problems that may arise.”¹ Plaintiffs independently and in support of those districts who have so
2 moved,² urge the Court to exercise its powers under C.C.P. § 1048 to sever trial of the Cross-
3 Complaint and stay proceedings on the Cross-Complaint pending resolution of Plaintiffs’
4 Amended Complaint.

5 ARGUMENT

6 I. THE COURT HAS BROAD POWERS TO STRUCTURE THE LITIGATION OF 7 THE STATE’S CROSS-COMPLAINT AGAINST SCHOOL DISTRICTS.

8 A. C.C.P. §1048 Authorizes Severance of the Cross- 9 Complaint.

10 C.C.P. § 1048(b) provides:

11 The court, in furtherance of convenience or to avoid prejudice, or
12 when separate trials will be conducive to expedition and economy,
may order a separate trial of any cause of action, including a cause
of action asserted in a cross-complaint, or of any separate issue or
of any number of causes of action or issues . . .

13 Section 1048 provides this Court with broad discretion to order a severance and separate trials
14 when faced with a cross-complaint. *See* note 1, *supra* (citing cases); *McLellan v. McLellan*,
15 23 Cal. App. 3d 343, 353 (2nd Dist. 1972). The exercise of such discretion will not be interfered
16 with on appeal except where there has been a manifest abuse of discretion. *Id.*, *citing*
17 *McArthur v. Shaffer*, 59 Cal. App. 2d 724, 727 (3rd Dist. 1943).³

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20 ¹ Opposition to Motion to Strike at 7, *citing* *Roylance v. Doelger*, 57 Cal. 2d 255, 261-62
21 (1962); *Lindsay v. American President Lines, Ltd.*, 214 Cal. App. 2d 146, 149 (1st Dist. 1963);
Simon Hardware Co. v. Pacific Tire & Rubber Co., 199 Cal. App. 2d 616 (1st Dist. 1962);
American Motorcycle Ass’n v. Superior Court, 20 Cal. 3d 578, 605-06 (1978).

22 ² *See* Motion to Sever Cross-Complaint of Fresno Unified School District and San
23 Francisco Unified School District, joined by Los Angeles Unified School District, Pajaro Valley
24 Unified School District, Merced City Elementary School District, Ravenswood City Elementary
School District, West Contra Costa Unified School District and Long Beach Unified School
District.

25 ³ Cross-Defendants Fresno Unified and San Francisco Unified also purport to rely on
26 C.C.P. § 598 in support of the court’s power to sever proceedings on a cross-complaint. The
27 caselaw makes clear (*see* note 1, *supra*) that the court’s severance power with respect to cross-
28 complaints resides in C.C.P. § 1048. C.C.P. § 598 concerns, instead, another possible case
management decision which may overlap with other aspects of § 1048(b) powers--namely,
bifurcation for trial of the issues in a complaint. *See, e.g., Trickey v. Superior Court*, 252 Cal.
App. 2d 650, 653 (3rd Dist. 1967) (C.C.P. § 598 “was adopted...[to] avoid[.]...the waste of time

1 **B. Severance is Appropriate Where a Cross-Complaint Raises Distinct**
2 **Issues Against Third-Parties Which Will Unduly Complicate the Case.**

3 At times, the State has likened its Cross-Complaint to an indemnity action against school
4 districts. *E.g.*, Opposition to Motion to Strike at 8. Cross-complaints seeking indemnification
5 from third-parties can be severed from the trial of a plaintiff's complaint. *American Motorcycle*,
6 20 Cal. 3d at 606; *see also Roylance*, 57 Cal. 2d at 261-62. Severance is particularly appropriate
7 where the cross-complaint raises distinct issues against third parties, *e.g.*, *Omni Aviation*
8 *Managers, Inc. v. Municipal Court*, 60 Cal. App. 3d 682, 684 (2nd Dist. 1976), *Bratton &*
9 *Moretti v. Finerman & Son*, 171 Cal. App. 2d 430, 435 (4th Dist. 1959), or where it appears the
10 cross-complaint against third parties will unduly complicate the underlying action. *American*
11 *Motorcycle*, 20 Cal. 3d at 606; *see also Roylance*, 57 Cal. 2d at 261-62; *Gehman v. San Mateo*
12 *Cty. Superior Court*, 96 Cal. App. 3d 257, 266 (1st Dist. 1979). Here both reasons exist to justify
13 severance.

14 **II. TRIAL ON THE CROSS-COMPLAINT SHOULD BE SEVERED AS IT RAISES**
15 **SEPARATE AND INDEPENDENT ISSUES FROM THE AMENDED**
16 **COMPLAINT.**

17 **A. Plaintiffs' Complaint Concerns the State's Non-Delegable**
18 **Duty to Establish and Maintain an Effective System of**
19 **Oversight that Ensures Basic Educational Opportunities.**

20 This Court made clear in its Order overruling the State's demurrer that "this case is
21 *exclusively* about the State's system of oversight and that system's alleged inadequacies and
22 failures." Order at 2 (emphasis added). In particular, the Court affirmed that this case "is aimed
23 at ensuring *a system that will either prevent or discover and correct [the alleged] deficiencies*
24 *going forward.*" *Id.* (emphasis added). The obligation to establish and maintain an effective
25 system of oversight and management which ensures basic educational equality is the Defendants'
26 and the Defendants' alone.⁴ As this Court itself concluded:

27 and money caused by the unnecessary trial of damage questions in cases where the liability issue
28 is resolved against the plaintiff") (citing Judicial Council Reports).

⁴ *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 v. State of California*, 4 Cal. 4th 668, 681
(1992) ("the State's ultimate responsibility for public education cannot be delegated to any other

1 The State of California has taken on itself through its Constitution,
2 statutes, and regulations to provide universal public education and
3 to do so on a basis that satisfies basic standards of equality. . . .

4 That the State has chosen to carry out certain of its obligations
5 through local school districts does not absolve the State of its
6 ultimate responsibility.

7 Order at 1-2, *citing Butt*, 4 Cal 4th at 685.

8 The litigation of Plaintiffs' amended complaint will address: (1) whether the *State*
9 *Defendants* have a *system* of oversight and management concerning the delivery of basic
10 educational essentials; (2) the effects of the *State Defendants*' failure to establish an oversight and
11 management *system* (*i.e.*, any factual issues concerning the actual conditions existing in the public
12 schools); and (3) the appropriate remedy to ensure the *State Defendants*' establish an effective
13 State *system* of oversight and management. By definition, the district cross-defendants cannot
14 bear liability for the State's failure to institute and operate effectively a system of oversight, nor
15 can claims against the districts regarding particular conditions play a role in a determination of
16 whether "the oversight and management systems the State has in place . . . are legally adequate
17 and whether they are being properly implemented." Order at 2. Because "this case is not about
18 correcting the specific deficiencies suffered by these students at their specific schools in their
19 specific school districts," *id.*, the discovery and trial of Plaintiffs' complaint need not address the
20 correction of those specific deficiencies, much less the district's "share [of] responsibility"⁵ in
21 causing them.

22
23 entity"). To the extent that school districts have any responsibility for education, they do so as
24 agents of the State and not as independent or separate actors. *San Francisco Unified School*
25 *District v. Johnson*, 3 Cal. 3d 937, 952 (1971) ("To carry out this responsibility [for education]
26 the state has created local school districts, whose governing boards function as agents of the
27 state."); *see also Kirchmann v. Lake Elsinore Unified School District*, 83 Cal. App. 4th 1098,
28 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)).

⁵ State's Opposition to Motion to Strike at 8.

1 **B. The State’s Cross-Complaint Concerns Specific District**
2 **Failures in Implementing Delegated Duties.**

3 As even the State has conceded, its Cross-Complaint “raise[s] new issues [and] add[s]
4 new parties” to the case. Opposition to Motion to Strike at 10. The addition of issues and parties
5 by the State is not in any way concerned, however, with correcting the State’s own system of
6 oversight and management (or the lack thereof). The Cross-Complaint seeks only to establish
7 some level of district fault for certain of the specific conditions identified by Plaintiffs’ complaint.
8 Far from purporting to establish any new oversight system to prevent or detect and correct school-
9 level denials of basic educational necessities, the Cross-Complaint augurs only for the status quo
10 in its effort to shift responsibility to districts. The Cross-Complaint seeks to rely only on (a)
11 whatever statutory rules currently exist concerning the provision of basic educational necessities;
12 (b) existing monitoring mechanisms (*i.e.*, learning about conditions when third parties bring them
13 to Defendants’ attention, rather than systematically); and (c) existing enforcement mechanisms
14 (*i.e.*, suing because there is no enforcement mechanism).⁶

15 As an initial matter, it bears noting that a substantial portion of the conditions alleged in
16 Plaintiffs’ complaint are not sought to be remedied *at all* by the Cross-Complaint. Nowhere in
17 the strings of statutory authority asserted by the State does it seek to identify any explicit
18 violation of law committed by the districts that would render Cross-Defendants liable for
19 providing undercredentialed teachers or over-crowded school facilities. Instead, the violations of
20 law identified by the State refer, at most, to duties (albeit, vague and ill-defined) concerning
21 instructional materials and supplies and school facilities. *See* Cross-Complaint at ¶¶ _____.⁷

22 ⁶ If anything, the Cross-Complaint implicitly acknowledges the non-existence of an
23 oversight system in: (1) conceding the State does not know and cannot confirm, absent litigation,
24 whether serious educational deficiencies exist in the schools; and (2) conceding the State has no
25 system, absent litigation, to bring schools up to whatever basic educational standards it purports
26 to have in effect.

27 ⁷ The Cross-Complaint alleges violations of the following provisions of the *California*
28 *Education Code*: § 17366 (Legislative intent that districts have a plan for repair, reconstruction
 or replacement of school buildings), § 17565 (district duty to furnish its school property), § 17576
 (district duty to supply “sufficient patent flush water closets for the use of pupils”), § 17593
 (district duty to “keep the schoolhouses in repair”), § 35290 (district duty to “maintain schools
 and classes as provided by law”), § 35293 (district duty to maintain schools “with equal rights
 and privileges as far as possible”), § 37610 (authority for district to establish year-round schools),

1 Likewise, the State’s factual allegations, though repeating all other allegations of Plaintiffs, omit
2 all references to the lack of fully credentialed teachers and all but one reference to severe
3 overcrowding (*see* ¶162, repeating allegations regarding overcrowding at Cahuenga Elementary
4 School only).⁸

5 With respect to the subset of issues actually raised by the Cross-Complaint, the litigation
6 of the asserted violations of law are simply separate and independent issues from the management
7 and oversight case advanced by Plaintiffs’ complaint. Whether a particular district has adopted a
8 policy on obsolescence of textbooks, or adopted a plan that identifies schools in need of repair;
9 whether a district has taken all the actions it should have taken to ensure textbook availability;
10 why the district failed to supply sufficient bathrooms to students, etc. are issues of no central
11 import to Plaintiffs’ case. Such issues raise distinctly different legal questions and require
12 distinctly different factual investigations than arise from the Amended Complaint.

13 Plaintiffs’ case will instead inquire whether the State Defendants were aware of the
14 conditions present in the particular schools; whether the State Defendants ever took any actions to
15 prevent or detect and correct such conditions; and whether an effective system of oversight would
16 enable the State Defendants to monitor, prevent, and detect and correct such problems. All of
17 these issues focus in on the State’s ultimate responsibility for providing fundamentally equal
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20 § 37670 (authority for district to establish year-round schools with 163-day schedule), § 38118
21 (writing, drawing paper and other necessary supplies to be furnished “under the direction of the
22 [district] governing board”), § 60045 (district duty to adopt instructional materials which it deems
23 “accurate, objective, current, and [grade-level appropriate]”), § 60119 (requirement that district,
24 after 1998-99 fiscal year, hold hearings on textbook availability; explain reasons for lack of
25 availability; and take actions within two years to ensure sufficient availability, except actions
26 requiring reimbursement by Commission on State Mandates), § 60411 (duty of high school
27 districts to purchase textbooks for the use of students without charge) and § 60500 (district duty
28 to adopt rules regarding obsolescence of instructional materials); and the following provisions of
the *California Code of Regulations* (“C.C.R.”) 5 C.C.R. §§ 630 (districts responsible for
“condition of the school premises”) and 631 (“[a]dequate separate toilet facilities [to] be
maintained”).

26 ⁸ Conversely, LAUSD’s recently filed motion to intervene in Plaintiffs’ case focuses
27 exclusively on the overcrowding and teacher credentialing issues. LAUSD Motion to Intervene
28 at 6 (“LAUSD contends that the proximate cause of each of the ills alleged by plaintiffs in the
First Amended Complaint is pupil overcrowding.”); *id.* at 8 n.2.

1 educational opportunities. Assuming the State still elected to proceed with its Cross-Complaint
2 upon resolution of Plaintiffs' complaint, the State and districts could litigate the districts' share of
3 responsibility, if any, as to specific conditions without Plaintiffs' participation and after this Court
4 has already entered an order directing the establishment of an effective oversight system.⁹

5 **III. TRIAL OF THE CROSS-COMPLAINT SHOULD BE SEVERED AS IT WILL**
6 **UNDULY COMPLICATE LITIGATION OF PLAINTIFFS' COMPLAINT AND**
7 **UNNECESSARILY BURDEN DISTRICTS.**

8 **A. The Cross-Complaint Complicates Plaintiffs' Case With**
9 **Irrelevant "Indemnity" Claims Against Third-Party**
10 **Districts and Burdens Districts With Expensive and**
11 **Unnecessary Participation.**

12 The Cross-Complaint represents a not too subtle attempt by the State to revive the very
13 diversionary tactic it lost on demurrer under the guise of a need for administrative exhaustion.
14 Essentially, the State seeks to force multiple mini-trials on specific conditions in specific school
15 districts rather than face the single statewide oversight trial framed by Plaintiffs. The Cross-
16 Complaint's independent focus on resolving specific conditions at specific schools, and its
17 independent focus on adjudicating the district's share of responsibility for those specific
18 conditions under distinctly different legal violations than alleged in the complaint, opens the case
19 up to a host of additional, complicating issues to be discovered, tried, and determined.¹⁰

20 Though the Court denied Plaintiffs' motion to strike the Cross-Complaint, it has correctly
21 noted that it can deal with complications wrought by the Cross-Complaint through case
22 management orders. The order severing and staying the Cross-Complaint proposed by Plaintiffs
23 and a number of districts will further anchor this case from spiraling away from its "exclusive[]"

24 ⁹ See, *Morehart v. County of Santa Barbara*, 7 Cal. 4th 738, 740-41 (1994) (judgment in a
25 multiparty case determining all issues as to one or more parties may be treated as final even
26 though issues remain to be resolved between other parties); cf. *Tinsley v. Palo Alto Unified Sch.*
27 *Dist.*, 91 Cal. App. 3d 871, 880-81 (1st Dist. 1979) (order demurring plaintiffs' desegregation
28 case against school district final and appealable despite unresolved issues remaining in trial court
against State where legal issues against district, possessing limited powers, not identical with
State, which possesses "plenary powers in all school district affairs").

¹⁰ See, e.g., Cross-Defendants' MPA in Support of Motion to Sever Cross-Complaint at 7
("If these alleged conditions do in fact exist, the reasons why they may occur at each school
district could vary widely.")

1 focus on State oversight and management, Order at 2, and degenerating into a quagmire of State
2 efforts to litigate “specific deficiencies suffered by [] students at their specific schools.” *Id.*
3 Requiring litigation of such irrelevant matters as the districts’ “share [of] responsibility”¹¹ for the
4 State’s non-delegable duty to ensure basic educational opportunities will unduly and
5 unnecessarily complicate and delay Plaintiffs’ case. These are precisely the type of complications
6 which warrant the Court’s exercise of its severance powers. *Roylance*, 57 Cal. 2d at 261-62;
7 *Linday*, 214 Cal. App. 2d at 149; *American Motorcycle*, 20 Cal. 3d at 605-06.

8 Not only do the disparate theories of liability and the differing targets of liability justify
9 severing the trials on the Cross-Complaint from the trial on Plaintiffs’ complaint, as unduly
10 complicating the latter, but so too do the differing remedies posed. Whatever court-ordered
11 remedies the State believes it needs against specific districts to see that they provide specific
12 educational necessities, such remedies are, at best, tangential to the oversight remedy Plaintiffs
13 seek against the State.

14 In fact, whichever way Plaintiffs’ case is resolved, litigation on the Cross-Complaint may
15 not ever be necessary. Plaintiffs might not prevail, and the State’s conditional “indemnity” action
16 might fall away on that basis. Second, Plaintiffs believe they will prevail and succeed in
17 establishing an effective system of oversight and management. If such a system is put in place,
18 the State will no longer need to pursue its Cross-Complaint. Instead, the means for ensuring
19 delivery of educational tools that Defendants claim to lack currently, absent litigation,¹² will be at
20 hand. Third, Plaintiffs’ trial — which will not focus on establishing specific deprivations in
21 specific school districts — may not single out a number of the school districts accused in the
22 Cross-Complaint. Thus, allowing the Cross-Complaint to proceed at this juncture only further
23 complicates Plaintiffs’ case by unnecessarily forcing unwilling districts into the fray over matters
24 that will likely never be tried.

25 _____
26 ¹¹ Opposition to Motion to Strike at 8.

27 ¹² *See, e.g.*, Cross-Complaint ¶33 (“...Unless restrained and enjoined by order of this
28 Court, the San Francisco Unified School District will not correct such conditions, but will fail and
refuse to do so.”).

1 **B. The Cross-Complaint Poses Extensive, Unnecessary**
2 **Logistical Burdens.**

3 Failure to sever and stay the Cross-Complaint will complicate and delay this action,
4 resolution of which is of paramount import to hundreds of thousands of California school
5 children. The Cross-complaint's injection of the districts into this lawsuit will hamstring this
6 litigation and stall plaintiffs' efforts to learn the extent of the State's disregard for its educational
7 obligations. The logistical nightmare posited in Plaintiffs' papers on its Motion to Strike the
8 Cross-Complaint is already becoming reality. As the Court was informed at the March 6, 2001
9 status conference, already the parties have had to delay depositions of school principals because
10 not all 18 districts would agree to their proceeding; already Plaintiffs have had to delay
11 depositions of State witnesses because the State Defendants refused to produce witnesses without
12 the districts first agreeing not to recall them. A determination by this Court that the Cross-
13 Complaint were severed and stayed would, on this issue alone, reduce substantial delay by
14 providing much-needed clarity and economy to the litigation of Plaintiffs' case. Districts'
15 counsel would know that they need not participate in depositions proceeding under the complaint
16 which do not concern district witnesses, and the State would know it could not hold up
17 depositions based on the hypothetical risk that their witnesses might be called in the future in a
18 separate case.¹³

19 Absent the clarity and economy a severance and stay order would provide, such logistical
20 problems will continue for the parties and the Court as attempts are made to coordinate motion
21 practice and discovery. Traditional litigation procedures where all attorneys expect to be
22 consulted as to each hearing and deposition date or change thereto, where all attorneys are served
23 with each motion, each discovery request and the responses thereto, and where all attorneys

24 _____
25 ¹³ Even absent a severance and stay, the State's attempt to consider a deposition under the
26 complaint and a subsequent deposition under its Cross-Complaint as proceeding under the same
27 action is a stretch. Traditionally, a cross-complaint is treated "for most purposes...as [an]
28 independent action[]", *National Electric Supply Co. v. Mount Diablo Unified School Dist.*,
187 Cal. App. 2d 418, 422 (1st Dist. 1960). With severance and stay, Defendants have no basis
for claiming that the cross-defendants are parties to Plaintiffs' action under the one-deposition
rule. C.C.P. § 2025(t).

1 expect to conduct an examination of every witness, promise to continue to cause mass confusion,
2 place an undue burden on the Court, and impose undue delay on resolution of Plaintiffs' case.¹⁴

3 **IV. PROCEEDINGS ON THE CROSS-COMPLAINT SHOULD BE STAYED.**

4 The Court has inherent authority to manage the litigation before it, including the authority
5 to stay discovery and litigation of specific issues. *E.g., Technitrol, Inc. v. Digital Equipment*
6 *Corp.*, 62 F.R.D. 91, 92 (N.D. Ill. 1973) (applying FRCP 42(b) to bifurcate and stay infringement
7 issues in a patent litigation pending resolution of patent's validity).¹⁵ As in *Technitrol*, courts
8 may stay proceeding on one aspect of a case, especially where it seems that litigation thereon
9 could prove unnecessary. Here, it flies in the face of judicial economy to force Plaintiffs to
10 participate in the litigation of irrelevant and tangential issues which may well never be tried.
11 Even more so, it makes no sense to require districts to spend tens or hundreds of thousands of
12 dollars each to litigate issues which are unlikely to proceed whichever way Plaintiffs' complaint
13 is resolved. Moreover, if proceedings on the Cross-Complaint are *not* stayed and Plaintiffs
14 prevail, the speedy implementation of an effective oversight and management system for the
15 entire State public school system will, contrary to the interests of justice, be delayed by the
16 State's satellite litigation into specific conditions in a few schools.

17 In the interests of judicial economy for all concerned, and in the interests of achieving the
18 effective delivery of basic educational opportunities to thousands of currently-deprived students
19 as quickly as possible, Plaintiffs request that this Court not only sever the trial but also stay
20 proceedings on the Cross-Complaint pending resolution of Plaintiffs' case.

21
22 ¹⁴ The moving districts have acknowledged as much in their papers for severance: "The
23 course of the underlying lawsuit will inevitably be delayed if the parties are forced to
24 accommodate the schedules of the many additional attorneys, client representatives, witnesses
25 and deponents that will be present if the cross-complaint is not severed and the proceedings
regarding it are not stayed." Cross-Defendants' MPA in Support of Motion to Sever Cross-
Complaint at 7.

26 ¹⁵ C.C.P. § 1048(b) "is revised to conform in substance to Rule 42 of the Federal Rules of
27 Civil Procedure" ("FRCP"). Leg. Committee Comment to 1971 Amendment to C.C.P. § 1048.
28 Accordingly, federal authorities interpreting and applying FRCP 42(b) can serve as persuasive
authority with respect to C.C.P. § 1048.

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CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant its Motion to Sever the Cross-Complaint and Stay Proceedings.

Dated: March 21, 2001

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