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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]

PLAINTIFFS' REPLY IN SUPPORT OF 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

STATE OF CALIFORNIA,

Cross-Complainant,

v.

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

Cross-Defendants.

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INTRODUCTION

By Plaintiffs' count, 11 of the18 districts in the Cross-Complaint have moved or joined in moving to sever and stay Defendant's case. [1] None of the remaining districts has opposed Fresno/SFUSD's motion or that of the Plaintiffs. The agency Defendants have remained curiously silent as to all issues regarding the Cross-Complaint. As the movants lay out, there are substantial reasons for the Court to grant Plaintiffs' and the districts' motions under *California Code of Civil Procedure* ("C.C.P.") § 1048—and the State's opposition has failed to rebut them.

Though the State seeks to rewrite the Constitution in its opposition and shift its ultimate and plenary obligation to deliver basic educational necessities to each student onto the districts, it cannot hide from a century of jurisprudence that makes clear the State itself bears that burden—over and above, separate and apart from the duties of its subordinate districts. Nor can the State so glibly collapse its case about the specific conditions in specific schools into Plaintiffs' properly pled case concerning the State's failure to maintain an effective system of oversight and management. Though some facts regarding the existence of conditions in some schools may theoretically overlap, the great bulk of the Cross-Complaint raises wholly distinct issues—and in a way that threatens to drown Plaintiffs' case. The Cross-Complaint, with its focus on the causes of specific problems in specific school districts, raises a host of condition-specific issues not present in Plaintiffs' case. Moreover, it proposes to raise all of these issues at trial for all schools, compared to the subset of schools that will be involved in Plaintiffs' trial. Not only does inclusion of the Cross-Complaint waste judicial resources by unnecessarily expanding Plaintiffs' case, the litigation of the Cross-Complaint may not ever be necessary should Plaintiffs prevail in establishing a system of oversight that will enable the State to cure the problems by other means.

Finally, though the State's opposition cavalierly suggests that no additional discovery is engendered by its Cross-Complaint, and that none has yet occurred, both statements err. New discovery from the districts has begun and only promises to grow. Plaintiffs' case focuses on the

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[1] Fresno Unified's and San Francisco Unified's motion has been joined by Los Angeles Unified, Pajaro Valley Unified, Merced City Elementary, Ravenswood City Elementary, West Contra Costa Unified, Long Beach Unified, Lynwood Unified, Oakland Unified, and Visalia.

State's non-delegable duty and ultimate responsibility to provide an effective oversight system and not on corrections to specific problems or a determination of a district's share of responsibility for the State's ultimate and plenary responsibility. Because discovery on the Cross-Complaint relating to such site-specific issues has no place in Plaintiffs' case and is, therefore, not necessary at this time—if ever—Plaintiffs urge the Court to grant their motion to sever and stay.

ARGUMENT

I. THE FOCUS OF PLAINTIFFS' CASE ON THE LACK OF A STATE OVERSIGHT SYSTEM IS SEPARATE AND INDEPENDENT FROM THE CROSS-COMPLAINT'S FOCUS ON THE CAUSES AND REMEDIES OF SPECIFIC SCHOOL PROBLEMS.

A. The State Cannot Escape its Independent Constitutional Duty to Oversee and Manage the Public School System So that Each Child Receives Basic Educational Opportunities.

Defendant State of California concedes that "the State is ultimately responsible, under the California Constitution, for public education in California" and that "every California school child" has "the right to an education that meets a certain basic standard." Response of Defendant State of California to Motions for Severance and Stay ("Opposition to Severance") at 2-3. Incredibly, the State then silently attempts to rewrite over 100 years of California Supreme Court jurisprudence by asserting that, for purposes of this doctrine, the use of the word "State" by the courts has always been intended to include "the school districts". *Id.* at 2-3 n.2.[2]

To the contrary, the courts could not have been clearer that the State *qua* State has been vested with ultimate and plenary powers over the public schools, as distinct from the lesser powers and responsibilities of the subordinate agent-districts. "[T]he existence of th[e] local-district system has not prevented recognition that the State itself has broad responsibility to ensure basic educational equality under the California Constitution." *Butt v. California*, 4 Cal.4th 668, 681 (1992). "The public schools of this state are a matter of statewide rather than local or municipal concern; their establishment, regulation and operation are covered by the Constitution

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[2] In a similarly brazen attempt to reinterpret the Constitution (and violate the doctrine of Separation of Powers), the State also includes the Judiciary as a co-equal partner in having ultimate responsibility to deliver basic educational necessities rather than merely an enforcer of the State's constitutional responsibilities. *Id.*

and the state Legislature is given comprehensive powers in relation thereto." *Hall v. City of Taft*, 47 Cal.2d 177, 179 (1956).[3]

The State professes to know of no case that squarely places ultimate responsibility upon the State's shoulders—over and above the actions of a district—to oversee and manage the education of individual students so as to ensure they receive basic and equal educational opportunities. Yet, *Butt* is precisely such a case. In *Butt* the State Supreme Court held 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." *Butt*, 4 Cal.4th at 685. Even in the face of district mismanagement—as occurred when the Richmond schools were to be closed six weeks early—"the State is obliged to intervene when a local district's [] problems would otherwise deny its students basic educational equality. . .". *Id.* at 692. Indeed, this Court itself has acknowledged that the fact "[t]hat the State has chosen to carry out certain of its obligations [to provide basic educational equality] through local school districts does not absolve the State of its ultimate responsibility." Order on Demurrer at 1-2, *citing Butt*, 4 Cal.4th at 685. With *Butt* as a backdrop, the Court reached the same ineluctable conclusion Plaintiffs have: the State has "management" and "oversight" responsibilities with respect to the public schools, and students are entitled to expect that the State will act to ensure its oversight system functions so that they may be assured of receiving basic educational opportunities. *Id.* at 2. Far from Plaintiffs snatching obligations out of thin air, it is the State who seeks to ignore and rewrite legal precedent to suit its own narrow version of its constitutional obligations.

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[3] *See also 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."); *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."); *Tinsley v. Palo Alto Unified School Dist.* 91 Cal.App.3d 871, 903 (1st Dist. 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."); *Cal. Tchrs. 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.").

B. The State Inappropriately Seeks to Collapse Its Wholly Distinct Case on Comparative District Fault Into Plaintiffs' Case on State Oversight Failures.

Throughout its opposition to severance, the State seeks to collapse Plaintiffs' oversight case with its Cross-complaint by claiming that both cases must first determine whether Plaintiffs are receiving an education that meets the basic minimum constitutional standard. Opposition to Severance at 3, 4, 5, 7, 8, 10, 11. When examined with any rigor, the State's facile unity breaks to pieces. The sum of the issues that will be litigated under the complaint and under the Cross-complaint can be grouped together and aligned with either pleading as follows:

I. *In Plaintiffs case as to a representative subset of schools and in the Cross-Complaint as to All Schools:* (a) whether an alleged condition (*e.g.*, lack of a textbook or a credentialed teacher) exists;

II. *In Plaintiffs Case and in the Cross-Complaint (as a general proposition, not as to each specific condition):* (b) whether the denial of a category of educational tool (*e.g.*, a book required for a course, a teacher qualified to teach her subject matter, a seat in a classroom) rises to the level of a denial of a fundamental educational opportunity and/or (c) the denial of an educational tool that is generally available to other students in the State;

III. *Only in Plaintiffs' Case:* (d) whether similar denials of basic educational necessities exist at other schools around the State; (e) whether the State is aware of the denials of basic and equal educational opportunity; (f) whether it has acted to cure any denials; and (g) whether it has any oversight system to prevent or discover and correct such educational deprivations; and

IV. *Only in the Cross-Complaint*: (h) what the districts involved with a specific deprivation did to cause the specific condition; (i) what specific statutes the district may have violated with respect to each condition; and (j) what specific remedy is needed for each condition.

Plaintiffs acknowledge the need to demonstrate some conditions exist for some students.[4] The proof of whether or not a condition exists should be relatively straightforward and, in most

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[4] Plaintiffs in this class action will not need to establish the existence of all the conditions for all the Plaintiffs at all their schools to establish State liability for failure to ensure basic educational opportunities.

cases, undisputed.[5] Whether the deprivation of the textbook required for a course, a teacher trained to teach the subject matter, a chair to sit in, etc. constitutes a fundamental denial of educational opportunity or of an opportunity most students in the State enjoy, need not be derived from proof specific to each denied textbook at each specific school, but from expert testimony and perhaps statewide evidence of educational opportunities. The notion that such basic educational essentials should be enjoyed by all should also not likely be a matter of great dispute.[6]

This is where any overlap between the complaint and the Cross-Complaint ends. Once the constitutional deprivation has been established for some Plaintiffs at some schools, the two cases diverge dramatically. Plaintiffs' class action case will proceed to examine the statewide existence of educational deprivations; the Cross-Complaint is limited to the schools in the complaint. Plaintiffs' case will proceed to its focus on, as this Court has articulated, "ensuring a system that will either prevent or discover and correct such deficiencies going forward." Order on Demurrer at 2. The evidence which establishes that Defendants have been unaware of the constitutional deficiencies, does not act to prevent or cure them, and does not have an oversight system capable of preventing, discovering or curing educational deprivations—in other words, the heart of Plaintiffs' case—will not overlap at all with the Cross-Complaint.

By the State's own characterization, Defendant's Cross-Complaint is not interested in establishing or improving any State system of oversight. Response of Defendant State of California to Motions for Judgment on the Pleadings at 9-10 ("Opposition to Judgment on the Pleadings"). Instead, the heart of Defendant's case is to establish district fault for conditions, district violations of State statutes, and remedies for specific conditions. This case, which as Defendants well know will prove highly fact-intensive and cumbersome, is not at all part of Plaintiffs'. Order on Demurrer at 2 ("this case is not about correcting the specific deficiencies

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[5] The State Department of Education's website, for example, reports the precise number of uncredentialed teachers at each school in the State. *See* www.cde.ca.gov/demographics.

[6] *See, e.g.*, Defendants' MPA in Support of Demurrer at 10 ("There is no dispute in this case about the objective of State policy [to see a first-rate teacher in every classroom]."); *id.* at 14 ("Once again, the State agrees with plaintiffs that every student in every public school should have a textbook.").

suffered by these students at their specific schools in their specific districts"). The overlap is minimal, applies only to conditions at a subset of schools and will not turn on intensive school-site specific proof (points I(a) and II(b)-(c), *supra*); on the central issues (points III(d)-IV(j)), the facts, the legal theories, and the remedies are almost entirely distinct and, in the case of the Cross-Complaint, will require extensive focus on specific conditions in specific schools in specific districts. The two cases should be tried separately.

II. SEVERANCE IS AUTHORIZED HERE AND WOULD RENDER BOTH TRIALS MORE EFFICIENT, NOT LESS.

A. The Authorities Provide the Court with Broad Discretion to Sever the Cross-Complaint.

Contrary to Defendant's suggestion, it is hardly "telling that neither plaintiffs nor Fresno cite any cases ordering separate trials in circumstances similar to those here." Opposition to Severance at 7. Indeed, Plaintiffs would be surprised to find a case presenting circumstances "similar to those here": a statewide class action against a State with "ultimate" and "plenary" responsibilities over a school system where, nonetheless, it cross-complained against a few districts—and, what's more, where it did so on a contingent theory analogous to indemnity. In any event, what is clear from the authorities is that severance and stay issues are decided on a case-by-case basis and that a judge has broad discretion in determining how to proceed.[7]

Because the determination to sever is largely driven by a case's facts and circumstances, it is Defendant's authority that proves of little help with this case. None of Defendant's cases denying severance involved even remotely similar circumstances. No cases involved civil rights claims; none involved a primary defendant who had "ultimate" and "plenary" responsibility for providing a benefit to plaintiff, but who nonetheless sued its own third-party agents on a different, much more fact-intensive, contingent theory of liability. Indeed, only one of Defendant's federal

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[7] *See* MPA in Support of Sever at 2-3, n.1 (citing cases); *cf.* 9 Wright & Miller, *Federal Practice and Procedure* § 2389 at 497 (3rd ed. 1992) (FRCP 42(b) "provides the district court with discretion to subdivide the case in whatever manner seems dictated by the circumstances").

cases involved third-party complaints and claims of indemnification at all.[8] Similarly, neither of the two California cases cited for the proposition that cross-complaints raising claims contingent on the resolution of the main action may, in theory, proceed along with the main action, is sufficiently close factually to provide much instruction.[9]

On the other hand, where a cross-complaint is directed against third parties and where, as here, it raises distinct issues against those parties, severance under C.C.P. § 1048 is appropriate. *See, e.g., Omni Aviation Managers, Inc. v. Municipal Court*, 60 Cal. App. 3d 682, 684 (2nd Dist. 1976), *Bratton & Moretti v. Finerman & Son*, 171 Cal. App. 2d 430, 435 (4th Dist. 1959); *see also* n. 7, *supra*. Severance under such conditions becomes even more appropriate where the cross-complaint and its distinct issues constitutes what Defendants concede to be "a contingent pleading. . .[*i.e.,* one] by which a party seeks relief only in the event that facts or legal theories which the party denies or contests are found to be valid." *See* Opposition to Judgment on the Pleadings at 8-9; *see Gehman v. Superior Court*, 96 Cal.App.3d 257, 266 (1st Dist. 1979) ("the trial judge has the authority under Code of Civil Procedure section 1048 to postpone the trial of the indemnity issue if he feels it will unduly complicate the plaintiff's suit. . ."); *cf. Chicago, Rock Island & Pac. R.R.Co. v. Williams*, 245 F.2d 397 (8th Cir. 1957) (severing under FRCP 42(b)).

B. Because There is Little Qualitative and Quantitative Overlap, it Would Prove Inefficient to Try the Two Cases Together.

The Amended Complaint and the Cross-Complaint are qualitatively and quantitatively different cases. As noted in Section I.B, above, the qualitative nature of the claims in the two

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[8] On the particular facts there, the Court elected not to sever based on its assessment that doing so would result in too great a risk of duplicative testimony and evidence. *Rodin Properties-Shore Mall, N.F. v. Cushman & Wakefield, Inc.*, 49 F.Supp.2d 709, 722 725 (D. N.J. 1999). Moreover, even if the motions for severance before the court were granted, other similar claims for indemnity would have remained. *Compare id.*. at 713 (movants) *to id.* at 715 (listing parties and claims).

[9] One turns on the interpretation of a specific code section providing a right for directors to seek indemnification from the corporation for the costs of a slander suit related to official duties. *Brokate v. Hehr Mfg.Co.*, 243 Cal.App.2d 133 (2d Dist. 1966). The other was not really a case involving a "contingent" cross-complaint. There, unlike here, the cross-defendants were also sued as defendants in the main case—and on the same facts as alleged in the cross-complaint. *Rimington v. General Accident Group of Ins. Cos.*, 205 Cal.App.2d 394, 397 (3rd Dist. 1962).

cases, the facts underlying them, and the remedies sought are, for the most part, distinct.[10] Equally significant, the number of overlapping schools between the two trials will be relatively small. Plaintiffs, as part of this class action, need only establish that specified deprivations occur at a representative subset of schools to establish the existence of classwide harms in need of a remedy. Plaintiffs do not anticipate needing or litigating over all of the conditions at all of the schools—which is what Defendant seeks by its Cross-Complaint.[11] Conversely, as is appropriate in a class action, Plaintiffs may bring in evidence of conditions at schools of class members who are not named Plaintiffs—schools which have nothing to do with the State's Cross-Complaint.

Rather than increasing judicial economy, combining the two cases and their trials only decreases it. Not only is the trial of school site-specific issues (grouped under point IV in Section I.B, above) irrelevant to Plaintiffs' case, but purely from an efficiency standpoint, trying *all* of the Cross-Complaint's issues around specific conditions, their causes, and remedies *for all the schools* in Plaintiffs' complaint is a waste of time before knowing for sure that certain conditions have been found by the Court to exist and to constitute a constitutional deprivation (*i.e.*, the issues grouped under points I and II in Section I.B., above). With severance and stay, the parties will not have to endure full discovery and trial on the fact-intensive, school site-specific issues raised by the Cross-Complaint for any schools in which constitutional deprivations were not found as part of the main case. What is more, as noted in Section III below, Plaintiffs success in establishing an oversight system may preclude the need to litigate the Cross-Complaint.

C. These Specific Districts do not Need to be Brought Into Plaintiffs' Case in Order for the Court to Craft a Remedy.

Defendant claims at various points that the Court cannot enact any remedy in Plaintiffs' case unless the districts from the Cross-Complaint are all present. Opposition to Severance at 4,

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[10] Also, not only are the statutory provisions cited in the Cross-Complaint not part of Plaintiffs' case, but a significant portion of Plaintiffs' case—allegations concerning the lack of credential teachers and overcrowding—is not part of the Cross-Complaint. MPA on Sever at 5-6.

[11] As the discovery process continues, Plaintiffs only gain confidence that, at most, only a few districts from the Cross-Complaint need be involved here. The State's own documents, interrogatory and deposition responses increasingly indicate that it will be less and less necessary to involve all districts and schools to establish the lack of a State oversight system.

9, 10. This is wrong on several fronts. First, to reiterate, the relief Plaintiffs seek is the construction of an effective system of oversight. The Court has made all too clear that our case is not about the correction of specific conditions in specific schools, as is sought in the Cross-Complaint. Plaintiffs seek the establishment of baseline constitutional educational standards and an oversight and management system from the State that will ensure the standards are met.

Second, were Plaintiffs to prevail and the State ordered to establish an oversight system, it hardly follows that all district- and school-level concerns would need to be passed through a litigation process. The State, districts, Plaintiffs and other interested stakeholders would all be expected to advance their expertise as part of assisting the State with devising its proposed oversight system. Material issues concerning the remedy over which there were contention may have to be resolved by the Court during the remedial phase. Yet, if so, only the subset of issues in contention and only parties desiring to contend them would need come before the Court. Viewed in such a context, it would only squander judicial resources to litigate all the allegations in the Cross-Complaint with the hope of assisting the Court on some unknown set of issues which may or may not ever arise during the remedial phase.

Third, whether or not the Court certifies this case as a class action, Plaintiffs seek relief that is statewide in scope. There are over 1,000 school districts in California. All of them are potentially affected, not just these 18. To take Defendants' argument to its logical extreme, all potentially affected districts must be brought—against their will no less—before the Court to vet the proposed remedy. Defendant cites no authority for its novel proposition. Indeed, the proper procedure where a third party has an interest and seeks to have input into a litigated matter is intervention. The districts, statewide, are seeking to do just that by way of their chosen representative. the California School Boards Association, and Plaintiffs have not opposed the CSBA's participation in the Court's crafting of the remedy in this case.[12] There simply is no

[12] Should the Court decide to grant movants' request to intervene, Plaintiffs' motion to sever and stay the Cross-Complaint remains unaffected. The issues properly raised by the putative intervenors do not conflict with the focus of Plaintiffs' complaint on the State's failure to establish and maintain an effective system of oversight—in stark contrast to the focus of the State's Cross-Complaint on district liability for specific conditions at specific schools.

basis to the State's assertion that its Cross-Complaint must be combined with Plaintiffs' case so that the 18 districts—against their will—can be made to participate in Plaintiffs' remedies.

III. A STAY OF THE CROSS-COMPLAINT IS PROPER.

The Court has the authority under C.C.P. § 1048 to defer trial of a cross-complaint. *Gehman*, 96 Cal.App.3d at 266. Discovery and trial on the Cross-Complaint represents a substantial burden of resources for all involved. A stay of discovery and trial proceedings is appropriate given that trial on the Cross-Complaint may not ever be necessary. If an effective system of oversight and management is established, the specific conditions the Cross-Complaint seeks to cure should be corrected by the system. MPA in Support of Severance at 8, 10.[13]

The State cavalierly acts as if no further discovery can or will flow from its Cross-Complaint. To the contrary, the fact that districts have not yet geared up with discovery requests for Plaintiffs, Defendants or third-parties is hardly surprising given their recent (Feb. 28th) entrance into the suit and their unsettled status pending decision on the motions to sever, demurr, and for judgment on the pleadings. In fact, crossing in the mail with Defendant's contention that no discovery has issued from any district were two sets of interrogatories served on Plaintiffs Jeffrey Seals and Heide Karnes by Visalia Unified School District. Additional discovery and litigation over a host of issues raised by the Cross-Complaint potentially await unless this Court acts to stay Defendant's attempt to complicate and entangle this case to a standstill. *See* I.B above, point IV; Plaintiffs' MPA in Support of Motion to Sever at 5-6 n.7.

CONCLUSION

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

Dated: April 6, 2001

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[13] *See* 9 Wright & Miller, *Federal Practice & Procedure* § 2388 at 476 ("If a single issue could be dispositive of the case or is likely to lead the parties to negotiate a settlement, and resolution of it might make it unnecessary to try other issues in the litigation, separate trial of that issue may be desirable to save the time of the court and reduce the expenses of the parties.").

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