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10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 CITY AND COUNTY OF SAN FRANCISCO

13 ELIEZER WILLIAMS, et al.,) Case No.: 312 236
14)
15 Plaintiffs,) Hearing Date: September 17, 2003
16)
17 vs.) Time: 3:30 p.m.
18)
19 STATE OF CALIFORNIA, DELAINE) Department: 20
20 EASTIN, State Superintendent)
21 Of Public Instruction, STATE) Judge: Hon. Peter J. Busch
22 DEPARTMENT OF EDUCATION, STATE)
23 BOARD OF EDUCATION,)
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25 Defendants.)
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I, Gregory S. Geeting, declare and state as follows:

1. I am currently Assistant Executive Director of the Board of Education of the State of California (Board of Education). I make this declaration in support of the opposition by defendant State of California to plaintiffs' motion for summary adjudication. All the facts set forth in this declaration are known to me personally and, if called as a witness, I could and would testify competently thereto.

2. In 1981 I began working for the California Department of Education (CDE) as a legislative coordinator and in the Local Assistance Bureau. I then worked for the Commission on State Finance from 1984 to 1987. Since 1987, I have worked for both the CDE and the Board of Education in various capacities. In particular, I was the Executive Director of the Board of Education from 1992 to 1997. In 1998, I returned to the CDE in the Curriculum Frameworks and Instructional Resources Office. For several months in 1999, I was the interim Executive Director of the Board of Education. In 2000 I again worked in the CDE curriculum frameworks office and for the Board of Education. Since 2000 I have worked for the Board of Education in the capacity of Assistant Executive Director or similar positions.

3. My duties as Assistant Executive Director include preparing the initial draft of the Board of Education's agendas, drafting the preliminary action report of the Board of Education's actions, and assisting the Executive Director with

1 various functions. By virtue of my work for the Department of
2 Education and the Board of Education, I have become familiar with
3 many issues, including the board's waivers of Education Code
4 provisions.

5
6 4. The Board of Education is the governing and
7 policy-determining body of the California Department of
8 Education. The state Superintendent of Public Instruction, who
9 heads the CDE, also serves as the Board of Education's executive
10 officer and secretary. The Board of Education sets K-12
11 education policy in the areas of standards, curriculum,
12 instructional materials, and assessment. The Board of Education
13 also adopts textbooks for use in grades K-8, and it adopts
14 regulations for its own government, the government of its
15 appointees, and the government of the state's public schools. In
16 addition, the Board of Education has the authority to grant local
17 education agency written requests for waivers of some sections of
18 the California Education Code.

19
20 5. Education Code section 60119, enacted in 1994,
21 required in part that school districts hold an annual, public
22 hearing and make a determination as to whether each pupil in the
23 district had, or would have prior to the end of the fiscal year,
24 sufficient textbooks or instructional materials in each subject
25 that are consistent with the content and cycles of the curriculum
26 framework adopted by the Board of Education. A school district
27 had to hold the public hearing and comply with the other
28

1 provisions of section 60119 in order to be eligible to receive
2 state instructional materials funds.

3
4 6. Every year school districts must also provide an
5 audit to the state (for the preceding fiscal year) that was
6 performed by independent accountants. The State Controller's
7 Standards and Procedures for Audits of California K-12 Local
8 Educational Agencies (Audit Guide) includes information
9 concerning the statutory requirements with which school districts
10 must comply. Starting with the 1997-1998 fiscal year, the Audit
11 Guide was amended to include a requirement that school districts
12 demonstrate compliance with section 60119. Following the Audit
13 Guide, auditors therefore review school districts to determine
14 whether they are in compliance with section 60119's requirements.
15 The results of these audits are provided to the state. Auditors
16 found many school districts in violation of section 60119.
17 Absent waivers, the 60119 audit findings would have resulted in
18 the affected school districts having to refund instructional
19 materials funds for any year in which the required public hearing
20 was not held. Because the audits were performed for the preceding
21 fiscal year, these instructional materials funds were for the
22 most part already expended.

23
24 7. When section 60119 went into effect, many school
25 districts initially failed to hold the annual public hearings
26 that were required by that law. Indeed, starting in 1998
27 auditors found numerous school districts in violation of section
28 60119. In some cases, it appeared clear (based on reports from

1 California Department of Education staff) that affected school
2 districts first became aware of requirements of section 60119
3 through the audit. In other cases, it was reported that school
4 districts claimed that they were confused about the funding
5 sources to which the section 60119 requirements applied.
6

7 8. Rather than be deprived of thousands of dollars of
8 already-expended instructional materials funds, numerous affected
9 school districts filed requests for retroactive waivers.
10 Accordingly, in 1998 and 1999 the Board of Education approved
11 several hundred waivers of Education Code section 60119 for the
12 prior years, but only after first determining that the applicant
13 school districts were in current compliance with that law. In
14 addition, in 1999 the Legislature amended section 60119 such that
15 all school districts retroactively became eligible to retain
16 state instructional materials funds received for fiscal years
17 1994-1995 through 1998-1999, regardless of whether they had
18 complied with the public hearing requirement.
19

20 9. The amendment also provided that school districts
21 would not be eligible for instructional materials funds
22 (beginning with the 1999-2000 fiscal year) unless they
23 demonstrated compliance with section 60119's requirements.
24 Specifically, the Legislature authorized school districts that
25 had failed previously to comply with section 60119, regardless of
26 the reasons, to retain instructional materials funds received in
27 prior years. The Legislature, however, required that all school
28 districts going forward comply with section 60119's requirements.

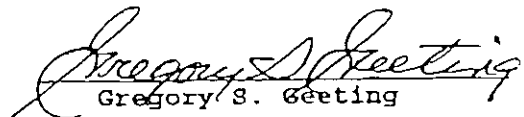
1 Moreover, the Legislature (through enactment of Education Code
2 sections 41344 and 41344.2) effectively precluded the Board of
3 Education from granting any future waivers (after July 7, 1999)
4 that would have the effect of retroactively eliminating the basis
5 of an audit exception. Indeed, since the 1999-2000 fiscal year,
6 the vast majority of school districts have been in compliance
7 with section 60119.

8
9 10. Currently school districts may still apply for
10 waivers of section 60119's requirements under very restricted
11 circumstances. In 2001 the Legislature enacted Education Code
12 section 41344.3, which permits the state Board of Education to
13 issue waivers of section 60119 to the extent that a failure to
14 comply with that section would otherwise subject the school
15 district to repayment of funds. To be eligible for this type of
16 waiver, the Board of Education must determine that violations
17 were minor or inadvertent and that the intent of Education Code
18 section 60119 was substantially met. In order to ensure that the
19 narrow authority for waivers set forth in section 41344.3 is
20 properly implemented, applicant school districts must submit a
21 written request to the CDE on the form attached hereto as exhibit
22 "A."

23
24 I declare under penalty of perjury under the laws of
25 the State of California that the foregoing is true and correct.

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Executed this 20th day of August 2003, at Sacramento,
California.


Gregory S. Geeting

CALIFORNIA DEPARTMENT OF EDUCATION
SPECIFIC WAIVER REQUEST
 SW-1 (10/01) <http://www.cde.ca.gov/waiver/>
 Page 1 of 2
 Send Original plus one copy to:
 Waiver Office, California Department of Education
 1430 N Street, Suite 5602
 Sacramento, CA 95814

**Instructional Materials Sufficiency
 Waiver of Retroactive Audit Penalty**

Faxed originals will not be accepted!

			CDS CODE					
LEA: ████████████████████			Contact/recipient of approval/denial notice: ████████████████████			Contact Person's E-Mail Address: ████████████████████		
Address: (City) ██████████		(State) CA	(ZIP) ████████		Phone (and extension, if necessary): ██████████			Fax Number: (████████)
*Period of Request: (month/day/year) From: ████████ To: ████████					Local Board Approval Date: (Required) ████████████████████			
*NOTE: Put in the fiscal year of the audit finding, use a separate form if more than one year.								
LEGAL CRITERIA								
<p>Authority for the Waiver: Education Code Section 41344.3: <i>Notwithstanding subdivision (c) of Section 41344 or any other provision of law, the State Board of Education may, upon a finding that violations were minor or inadvertent and the intent of Section 60119 was substantially met, consider and act upon requests to waive Section 60119 to the extent that a failure to comply with that section would otherwise subject the school district to a repayment due to an apportionment significant audit. The board may act on requests to waive Section 60119 regardless of whether the request was received before or after the effective date of this section.</i></p>								
<p>1. Education Code or California Code of Regulations Section to be waived: <i>Education Code Section 60119</i> Brief Description of the topic of the waiver: <u>To waive portions of E.C. 60119 regarding public hearings, 10 day notice of public hearings and/or notice of hearing posted in three public places.</u></p>								
<p>2. Position of the Bargaining Unit. (Important Note:) This item may not apply to your Waiver Request. However, even if consultation with the bargaining unit is not specifically required, you may still wish to consult.</p> <p>Does the district have any employee bargaining units? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, please complete required</p> <p>Date(s) the bargaining unit(s) was (were) consulted: _____</p> <p>Name of bargaining unit persons(s) consulted: _____</p> <p>The position(s) of the bargaining unit(s) was/were: <input type="checkbox"/> Neutral <input type="checkbox"/> Support <input type="checkbox"/> Oppose <i>(Please summarize below)</i></p> <p>Comments (if appropriate): _____</p>								
<p>NOTE: This item is not applicable to this request. (Items 3 and 4 are missing.)</p>								

5. **Education Code or California Code of Regulations section to be waived.** If the request is to waive a portion of a section, type the text of the pertinent sentence of the law, or those exact "phrases" requested to be waived (or use a strike out key).

60119.... (1) The governing board shall hold a ¹ public hearing or hearings at which the governing board shall encourage participation by parents, teachers, members of the community interested in the affairs of the school district, and bargaining unit leaders, and shall make a determination, through a resolution, as to whether each pupil in each school in the district has, or will have prior to the end of that fiscal year, sufficient textbooks or instructional materials, or both, in each subject that are consistent with the content and cycles of the curriculum framework adopted by the state board. ... (b) The governing board shall provide ² 40-days' notice of the public hearing or hearings set forth in subdivision (a). The notice shall contain the time, place, and purpose of the hearing and shall be posted in ³ three public places in the school district.

NOTE: Depending on the specific audit finding(s), select one or more of the above struck out phrases on the certification form that must be returned with the waiver request form.

6. **Desired outcome/rationale.** State what you hope to accomplish with the waiver. Describe briefly the circumstances that brought about the request and why the waiver is necessary to achieve improved student performance and/or streamline or facilitate local agency operations.

This LEA requests a waiver of E.C. 60119 based on the attached certification and attached documents. The goal of waiver approval would be the resolution of the audit finding and cancellation of applicable fiscal penalties.

Briefly state the circumstances which caused your audit finding:

[REDACTED]

District or County Certification – I hereby certify that the information provided on this application is correct and complete.

Signature of Superintendent or Designee: > [REDACTED]	Title: [REDACTED]	Date: [REDACTED]
----------------------------------------------------------	----------------------	---------------------

FOR CALIFORNIA DEPARTMENT OF EDUCATION USE ONLY

Staff Name (type or print):	Staff Signature: >	Date:
Unit Manager (type or print):	Unit Manager Signature: >	Date:
Division Director (type or print):	Division Director Signature: >	Date:
Deputy (type or print):	Deputy Signature: >	Date:

**Certification of Compliance with Education Code Section 60119
Attach to Specific Waiver Requesting Relief from Audit Penalty**

LEA NAME:	CDS CODE:
<p>In order to obtain a State Board of Education Waiver of past noncompliance with the requirements of Education Code Section 60119, I, hereby certify as follows on behalf of the district:</p>	
<p><i>Check all that applies (1 and/or 2 and/or 3) depending on your specific audit finding(s):</i></p>	
<p>1. Audit Finding for <u>failing to hold a hearing</u> in the _____ / _____ fiscal year:</p>	
<p>Check <u>ONE</u> as it applies to your districts situation if you failed to hold a hearing:</p>	
<p><input type="checkbox"/> I certify that EACH pupil in EACH school in the district had (by the conclusion of the above fiscal year) <u>sufficient textbooks or instructional materials</u>, or both, in EACH subject that are consistent with the content and cycles of the curriculum framework adopted by the State Board of Education (E.C. 60119). Textbooks and instructional materials meeting this certification should have been purchased within the last 6 years for “core” subjects and within the last 8 years for “non-core” subjects (E.C 60200(i)). The selection of those textbooks must have been made from the State Board adopted lists for students in grades K-8 or from a process in which the district explicitly found the materials to be consistent with the appropriate frameworks. Districts with students in grades 9-12 must have had a local “adoption” process for the selection of these materials (E.C. 60400) with a finding that they are consistent with the appropriate framework.</p>	
<p>OR</p>	
<p><input type="checkbox"/> I certify in the case of <u>insufficient textbooks or instructional materials</u> for this audit year, the district <u>has taken action</u> to ensure that EACH pupil will have sufficient textbooks or instructional materials within a two-year period.</p>	
<p>NOTE: If this is your situation, you must also <u>attach evidence that explains the insufficiency (numbers, classes, subject matter, etc.), and documentation of specific actions that were taken</u> in your district to ensure you will have sufficient textbooks and instructional materials within 2 years (24 months) of the close of the fiscal year for which you received the audit finding.</p>	

2. Audit Finding for failing to provide ten day notice of public hearing:

I certify that public notification of some other period of time, per district policy for public hearings, ensured that participation by parents, teachers and members of the community interested in the affairs of the school district was encouraged.

3. Audit Finding for failing to post the notice of public hearing in three public places:

I certify that the district's method of posting for public hearings ensured that parents, teachers and members of the community interested in the affairs of the school district knew the date, time, place and purpose of the public hearing.

I, additionally certify that the district is now in compliance with all other provisions of Education Code Section 60119 and has HELD a fully compliant public hearing and issued a resolution regarding textbook sufficiency on ___ / ___ / ___, a date after the finding of noncompliance in the audit year I wish to waive.

I understand that E.C. 60119 is a continuing, annual requirement for a public hearing and a resolution and that it will be audited every year.

Authorizing Signature of Governing Board President
or Board Member Designee:

Title:

Printed or Typed Name:

Date Signed:

NOTE: Please also attach to the specific waiver form, a copy of the district's audit findings and a copy of the response to the audit finding. (Rev. 10/11/01)