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9 Attorneys for Petitioners and Plaintiffs

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF CONTRA COSTA

12  
13 JANE DOE 1; JANE DOE 2; JOHN DOE;  
CYNTHIA CRUTCHFIELD; KATHERINE  
14 CZUJKO; and STEVE TRAYLOR,

15 Petitioners and Plaintiffs,

16 v.

17 ANTIOCH UNIFIED SCHOOL DISTRICT;  
DONALD GILL, Superintendent, Antioch  
18 Unified School District; CLAIRE SMITH,  
DIANE GIBSON-GRAY, BARBARA  
19 COWAN, WALTER RUEHLIG, DEBRA  
VINSON, Members, Board of Trustees,  
20 Antioch Unified School District; CHAFFEY  
JOINT UNION HIGH SCHOOL DISTRICT;  
21 MAT HOLTON, Superintendent, Chaffey  
Joint Union High School District; CHARLES  
22 UHALLEY, ARTHUR BUSTAMONTE,  
SHARI MEGAW, SUE OVITT, JOHN  
23 RHINEHART, Members, Board of Trustees,  
Chaffey Joint Union High School District;  
24 CHINO VALLEY UNIFIED SCHOOL  
DISTRICT; WAYNE JOSEPH,  
25 Superintendent, Chino Valley Unified School  
District; IRENE HERNANDEZ-BLAIR,  
26 ANDREW CRUZ, PAMELA FEIX, JAMES  
NA, SYLVIA OROZCO, Members, Board of  
27 Education, Chino Valley Unified School  
District; EL MONTE CITY SCHOOL  
28 DISTRICT; MARIBEL GARCIA,  
Superintendent, El Monte City School District;  
ROBERTO CRUZ, CATHI EREDIA,  
ELIZABETH RIVAS, JESSICA ANCONA,

**FILED**  
JUL 16 2015

STEPHEN H. NASH CLERK OF THE COURT  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA  
By A.J. GAMBO Deputy Clerk

Case No.

**N15-1127**

**VERIFIED PETITION FOR WRIT OF  
MANDATE OR OTHER APPROPRIATE  
RELIEF; VERIFIED COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF**

PER LOCAL RULE 5 THIS  
CASE IS ASSIGNED TO  
DEPT 9

1 JENNIFER COBIAN, Members, School  
Board, El Monte City School District;  
2 FAIRFIELD-SUISUN UNIFIED SCHOOL  
DISTRICT; KRIS COREY, Superintendent,  
3 Fairfield-Suisun Unified School District;  
DAVID ISOM, JUDY HONEYCHURCH,  
4 PAT SHAMANSKY, JONATHAN  
RICHARDSON, JOHN SILVA, KATHY  
5 MARIANNO, CHRIS WILSON, Members,  
Governing Board, Fairfield-Suisun Unified  
6 School District; FREMONT UNION HIGH  
SCHOOL DISTRICT; POLLY BOVE,  
7 Superintendent, Fremont Union High School  
District; BARBARA NUNES, HUNG WEI,  
8 JEFF MOE, NANCY NEWTON, BILL  
WILSON, Members, Board of Trustees,  
9 Fremont Union High School District;  
INGLEWOOD UNIFIED SCHOOL  
10 DISTRICT; DONALD BRANN, State  
Trustee, Inglewood Unified School District;  
11 MARGARET RICHARDS-BOWERS,  
CARLISS MCGEE, MELODY NGAUE-  
12 TUUHOLOAKI, GRACIELA PATINO,  
D'ARTAGNAN SCORZA, Members,  
13 Advisory Board of Education, Inglewood  
Unified School District; ONTARIO-  
14 MONTCLAIR SCHOOL DISTRICT; JAMES  
HAMMOND, Superintendent, Ontario-  
15 Montclair School District; SAMUEL  
CROWE, MICHAEL FLORES, MAUREEN  
16 MENDOZA, ELVIA RIVAS, ALFONSO  
SANCHEZ, Members, Board of Trustees,  
17 Ontario-Montclair School District;  
PITTSBURG UNIFIED SCHOOL  
18 DISTRICT; JANET SCHULZE,  
Superintendent, Pittsburg Unified School  
19 District; GEORGE MILLER, JOE  
ARENIVAR, DE'SHAWN WOOLRIDGE,  
20 LAURA CANCIAMILLA, DUANE SMITH,  
Members, Board of Trustees, Pittsburg Unified  
21 School District; SADDLEBACK VALLEY  
UNIFIED SCHOOL DISTRICT; CLINT  
22 HARWICK, Superintendent, Saddleback  
Valley Unified School District; SUZIE  
23 SWARTZ, GINNY FAY AITKENS,  
DOLORES WINCHELL, DENNIS WALSH,  
24 AMANDA MORRELL, Members, Board of  
Education, Saddleback Valley Unified School  
25 District; SAN RAMON VALLEY UNIFIED  
SCHOOL DISTRICT; MARY SHELTON,  
26 Superintendent, San Ramon Valley Unified  
School District; DENISE JENISON, GREG  
27 MARVEL, MARK JEWETT, KEN MINTZ,  
RACHEL HURD, Members, Board of  
28 Education, San Ramon Valley Unified School  
District; UPLAND UNIFIED SCHOOL

1 DISTRICT; NANCY KELLY,  
2 Superintendent, Upland Unified School  
3 District; P. JOSEPH LENZ, STEVE FRAZEE,  
4 LINDA ANGONA, WES FIFIELD,  
5 MICHAEL VARELA, Members, Board of  
6 Education, Upland Unified School District;  
7 VICTOR ELEMENTARY SCHOOL  
8 DISTRICT; JAN GONZALES,  
9 Superintendent, Victor Elementary School  
10 District; JOYCE CHAMBERLAIN,  
11 GABRIEL STINE, GARY ELDER, KAREN  
12 MORGAN, CLAYTON MOORE, Members,  
13 Board of Trustees, Victor Elementary School  
14 District; and DOES 1 through 10, inclusive,  
15 Respondents and Defendants.

### 11 PRELIMINARY STATEMENT

12 1. Each year, a significant number of school districts across California—including the 13  
13 school districts named in this case—willfully refuse to evaluate teachers in accordance with state law.  
14 These school districts, in negotiations with their local teachers unions, sign collective bargaining  
15 agreements that explicitly prohibit compliance with the Stull Act, a law passed by the California  
16 Legislature more than 40 years ago that requires school districts to evaluate teachers based, at least in  
17 part, on the progress of their students toward local and state academic standards.<sup>1</sup> In doing so, these  
18 school districts fail the hundreds of thousands of children who attend their schools, their parents and  
19 guardians, taxpayers, the communities they serve, and the State of California. This lawsuit seeks to  
20 force these school districts to comply with state law.

21 2. Teachers play a crucial role in providing California students the education they are  
22 guaranteed by the California Constitution. (See *Serrano v. Priest* (1971) 5 Cal.3d 584, 609; *Vergara*  
23 *v. State of California* (Super. Ct. L.A. County, 2014, No. BC484642), Judgment, pp. 1-3, 7-8 (Aug.  
24 27, 2014) (“*Vergara*”) (attached hereto as Exhibit B).) In fact, teacher quality is the single most

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28 <sup>1</sup> The complete text of the Education Code provisions that comprise the Stull Act are attached  
hereto as Exhibit A.

1 important in-school factor affecting student success.<sup>2</sup> Students taught by great teachers are more  
2 likely to succeed in school and in life—more likely to attend college, earn more money, and save  
3 more for retirement. And students taught by ineffective teachers are less likely to succeed both in  
4 school and in life.<sup>3</sup>

5 3. Of course, teachers differ in their abilities to provide effective instruction to students.  
6 Some teachers foster remarkable academic growth in their students, while others do not. (*Doe v.*  
7 *Deasy*, Modified Tentative Decision Granting Petition for Writ of Mandate, p. 17 (June 12, 2012)  
8 (attached hereto as Exhibit C); *Vergara*, Judgment, pp. 7-8 (Aug. 27, 2014).) In a single academic  
9 year, students taught by ineffective teachers fall significantly behind their peers, losing nine months  
10 or more of learning in comparison to students taught by highly effective teachers. (*Vergara*,  
11 Judgment, pp. 7-8 (Aug. 27, 2014).) “For [these] reasons, there is much to be gained from  
12 identifying those teachers whose performance lags, both for themselves and for their students.” (*Doe*  
13 *v. Deasy*, Modified Tentative Decision Granting Petition for Writ of Mandate, p. 17 (June 12, 2012).)

14 4. The proper evaluation of teachers is critical to ensuring that students are being taught  
15 by effective teachers. As the California Legislature has determined, and as common sense would  
16 dictate, student learning is the primary goal of the public education system. Thus, the Legislature has  
17 determined that student learning must be taken into account in determining a teacher’s effectiveness.

18 5. In the absence of proper evaluation of teachers, school districts cannot reasonably  
19 know whether teachers are actually promoting and advancing student learning over time. Teachers  
20 must be evaluated properly in order to be properly rated, retained, promoted, supported with  
21 additional training, transferred, or dismissed under state law.

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23 <sup>2</sup> (See, e.g., California Department of Education, *Greatness by Design* (Sept. 2012),  
24 <http://www.cde.ca.gov/eo/in/documents/greatnessfinal.pdf>; California Department of Education,  
25 *Evaluating Progress Toward Equitable Distribution of Effective Educators* (July 2007);  
<http://studentsmatter.org/evidence/> [compiling evidence from *Vergara*].)

26 <sup>3</sup> (Raj Chetty, John N. Friedman, & Jonah E. Rockoff, *Measuring the Impact of Teachers I:*  
27 *Evaluating Bias in Teacher-Value-Added Estimates*, *American Economic Review* 104(9), 2593-  
28 2632 (2014), <http://obs.rc.fas.harvard.edu/chetty/w19423.pdf>; Raj Chetty, John N. Friedman, &  
Jonah E. Rockoff, *Measuring the Impact of Teachers II: Teacher Value-Added and Student*  
*Outcomes in Adulthood*, *American Economic Review* 104(9), 2633-2679 (2014),  
<http://obs.rc.fas.harvard.edu/chetty/w19424.pdf>.)

1           6.       Extensive research has shown that effective teaching can, in fact, be measured  
2 accurately and responsibly.<sup>4</sup> But in order to be accurate, reliable, and predictive of student outcomes,  
3 teacher evaluations must be composed of multiple measures of teacher performance—including (but  
4 not limited to) students’ progress on state standardized tests.

5           7.       By using multiple valid measures of teacher performance when evaluating teachers,  
6 school districts can gain valuable information regarding teachers’ impact on students. Using such  
7 information to identify teachers whose performance is exemplary, as well as teachers who are  
8 struggling, benefits both students and teachers.

9           8.       With the Stull Act, first passed in 1971 and amended in 1999, the California  
10 Legislature determined that teachers cannot be evaluated properly without taking into account  
11 objective evidence of student learning, including, where applicable, state standardized test scores as  
12 part of a multiple-measure evaluation process. The Legislature concluded that there must be a nexus  
13 between pupil progress and teacher evaluations. (See *Doe v. Deasy*, Modified Tentative Decision  
14 Granting Petition for Writ of Mandate, pp. 21-23 (June 12, 2012).) A bare focus on “inputs” (*i.e.*,  
15 teachers’ credentials, seniority, or the methods by which they teach), with no consideration of  
16 “outputs” (*i.e.*, whether students are actually learning), is insufficient under the Stull Act. There must  
17 be some consideration of student learning. To that end, the Stull Act explicitly requires that student  
18 results on certain state standardized tests be considered in teacher evaluations.

19           9.       The State distributes standardized testing data to school districts each year. Thus,  
20 information that would empower school districts to evaluate teachers properly under the law exists  
21 and is available to them; they just need to use it.

22           10.       Nevertheless, the 13 school district Respondents in this case intentionally disregard  
23 valuable student achievement data that are accessible to them, choosing instead to remain ignorant as  
24 to the quality of the teachers in their schools. As long as the Stull Act remains unenforced in  
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27 <sup>4</sup> (See, e.g., Bill & Melinda Gates Foundation, Measures of Effective Teaching Project, *Ensuring*  
28 *Fair and Reliable Measures of Effective Teaching* (Jan. 2013),  
[http://www.metproject.org/downloads/MET\\_Ensuring\\_Fair\\_and\\_Reliable\\_Measures\\_Practitioner\\_Brief.pdf](http://www.metproject.org/downloads/MET_Ensuring_Fair_and_Reliable_Measures_Practitioner_Brief.pdf); <http://studentsmatter.org/evidence/> [compiling evidence from *Vergara*].)

1 California school districts, students—including many of the nearly 250,000 students who attend  
2 school in these 13 districts—will continue to suffer negative consequences every year, as they are  
3 assigned to classrooms staffed by teachers that the school district should, but does not, know are  
4 ineffective at achieving student learning.

5 11. For these reasons, Petitioners seek a writ of mandate to compel Respondents to follow  
6 State law by taking students' state standardized test scores into account when evaluating teachers.  
7 This simple action will have a tremendous positive impact not only on the nearly 250,000 students  
8 who attend school in the 13 districts in this case, but also on the more than six million public  
9 schoolchildren statewide whose education depends on a California school system staffed by quality  
10 teachers.

### 11 GENERAL ALLEGATIONS

12 12. Petitioners and Plaintiffs (“Petitioners”) are parents, teachers, and other concerned  
13 taxpayers from across California. They seek a writ of mandate to compel the 13 largest offending  
14 school districts to meet their obligations under Education Code section 44660 *et seq.*, commonly  
15 referred to as the “Stull Act,” which requires school districts to implement and enforce periodic  
16 evaluations of certificated personnel (primarily teachers and administrators).<sup>5</sup>

17 13. The Stull Act, originally enacted in 1971, states that “[t]he governing board of each  
18 school district shall establish standards of expected pupil achievement at each grade level in each area  
19 of study.” (Ed. Code, § 44662, subd. (a).) The Stull Act provides further that “[t]he governing board  
20 of each school district shall evaluate and assess certificated employee performance as it reasonably  
21 relates to . . . *[t]he progress of pupils toward the standards [adopted by the district locally] and, if*  
22 *applicable, the state adopted academic content standards as measured by state adopted criterion*  
23 *referenced assessments.*” (Ed. Code, § 44662, subd. (b)(1) [emphasis added].)

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26  
27 <sup>5</sup> As used herein, the terms “certificated personnel” or “certificated employee(s)” mean and shall  
28 refer to all personnel assigned to positions within school districts that require a certificate or  
credential required by statute to be eligible for employment in an instructional or non-  
instructional role, as specified.

1           14.     The Stull Act thus requires school districts to consider student progress toward state  
2 academic standards, whenever applicable, when evaluating teacher performance. Pupil progress  
3 toward state-adopted academic content standards (*i.e.*, the State’s definitions of proficiency for core  
4 academic content areas) is measured by students’ scores on “state adopted criterion referenced  
5 assessments”—standardized tests that provide a basis for determining a student’s level of knowledge  
6 and skills in relation to a well-defined domain of content.

7           15.     Criterion-referenced assessments or tests are academic knowledge-standard  
8 assessments. They are “used to determine how well students have learned specific information they  
9 have been taught.” (California Department of Education, *Key Elements of Testing*,  
10 <http://www.cde.ca.gov/ta/tg/ai/documents/keyelements0504.pdf>.) Criterion-referenced assessments  
11 are different from so-called “norm-referenced assessments,” which measure students against other  
12 students. In a criterion-referenced assessment, a student’s performance is compared to a specific  
13 learning objective or performance standard, not the performance of other students.

14           16.     Each year, millions of California students take state-adopted criterion-referenced  
15 assessments, and the results are made available to school districts. In plain terms, the Stull Act  
16 **requires** school districts to take into account students’ criterion-referenced standardized test scores  
17 when evaluating certificated employees.<sup>6</sup>

18           17.     The California Legislature passed the Stull Act and its subsequent amendments in an  
19 effort to improve the academic performance of students in California’s public schools. (*Doe v.*  
20 *Deasy*, Modified Tentative Decision Granting Petition for Writ of Mandate, p. 24 (June 12, 2012).)  
21 The Stull Act is premised on the commonsense public policy belief that student achievement will  
22 improve if student progress is made a component of teacher and administrator performance  
23 evaluations. (*Ibid.*)

24 \_\_\_\_\_  
25 <sup>6</sup> Although the Stull Act **explicitly requires** school districts to consider state-adopted criterion-  
26 referenced assessments in educator evaluations whenever applicable (Ed. Code, § 44662, subd.  
27 (b)(1)), it prohibits “the use of publishers’ norms established by standardized tests” in the  
28 evaluation and assessment of certificated employee performance. (Ed. Code, § 44662, subd. (e)).  
Publishers’ norms are data based on a comparison of a test taker’s performance to the  
performance of other test takers in a specified reference population (*e.g.*, age groups, grade  
groups).

1           18.     Yet despite the Stull Act’s clear language, numerous school districts throughout the  
2 State defy the Legislature each year by signing collective bargaining agreements requiring that  
3 students’ standardized test results *not* be used, in any way, in the performance evaluations of  
4 certificated personnel, including teachers. They do so in complete defiance of the Stull Act.

5           19.     Recently, in a case entitled *Doe et al. v. Deasy et al.* (Super. Ct. L.A. County, 2012,  
6 No. BS134604) (“*Doe v. Deasy*”), another group of petitioners successfully challenged the failure of  
7 the State’s largest school district—the Los Angeles Unified School District (“LAUSD”)—to comply  
8 with the Stull Act. The Honorable James C. Chalfant, Los Angeles Superior Court, found that  
9 LAUSD was not in compliance with the Stull Act because it failed to take students’ standardized test  
10 results into account when evaluating teachers, held that LAUSD’s duty to comply with the Stull Act  
11 was enforceable by mandamus, and therefore ordered that the performance of LAUSD’s certificated  
12 personnel must be evaluated as it reasonably relates to pupil progress toward local and state  
13 standards. The court granted a writ of mandate and awarded petitioners the costs of the suit. (*Doe v.*  
14 *Deasy*, Judgement Granting Petition for Writ of Mandate (July 24, 2012).) As a result of that ruling,  
15 LAUSD and its local teachers union are engaged in redesigning the teacher evaluation system in that  
16 district to be in compliance with the Stull Act. This action seeks to bring the same relief to nearly  
17 250,000 additional students across California, in the 13 largest school districts that continue to violate  
18 the Stull Act in the most blatant and deliberate manner—by expressly prohibiting compliance in their  
19 collective bargaining agreements.

20           20.     Respondents and Defendants in this case (“Respondents”)—Antioch Unified School  
21 District, Chaffey Joint Union High School District, Chino Valley Unified School District, El Monte  
22 City School District, Fairfield-Suisun Unified School District, Fremont Union High School District,  
23 Inglewood Unified School District, Ontario-Montclair School District, Pittsburg Unified School  
24 District, Saddleback Valley Unified School District, San Ramon Valley Unified School District,  
25 Upland Unified School District, Victor Elementary School District, and their respective  
26 superintendents and governing boards—are now the 13 largest school districts in California that  
27 continue to blatantly violate the Stull Act by expressly prohibiting the use of *any standardized test*  
28 *results* (including state-adopted criterion-referenced assessments) in the evaluations of certificated



1 employees. As a result, these school districts contravene the Stull Act's requirement that certificated  
2 employees be evaluated as their performance reasonably relates to pupil progress toward state  
3 standards as measured by state-adopted criterion-referenced assessments.

4 21. These school districts and their local teachers unions oppose efforts to enforce the  
5 Stull Act's requirement that student achievement on standardized tests be taken into account in  
6 evaluating the performance of certificated employees. They have signed collective bargaining  
7 agreements prohibiting compliance with the law.

8 22. This action is brought by Californians who pay taxes to fund the State's public school  
9 system and do not want their money to support school districts that defy state law.

10 23. Petitioners seek a writ of mandate to compel Respondents to comply immediately with  
11 the Stull Act by taking into account applicable state standardized test results when evaluating and  
12 assessing certificated employees. In the alternative, Petitioners seek injunctive and declaratory relief.  
13 Petitioners' contention is simple: Respondents must follow the law.

14 24. The deliberate refusal of the school district Respondents to comply with state law, just  
15 like LAUSD in *Doe v. Deasy*, is unacceptable and must be stopped. A writ must issue.

16 **PARTIES**

17 25. Individual Petitioners are, and at all times mentioned in this petition were, either  
18 (i) parents of minors living in or attending school in the school attendance zones of the offending  
19 districts, (ii) taxpayers residing within the boundaries of the offending districts, and/or (iii) other  
20 California taxpayers.

21 26. Petitioners have a beneficial interest in the quality of education provided to their  
22 children and all California students; the enforcement of all state education laws; and ensuring that  
23 certificated personnel are properly evaluated, retained, promoted, supported, and disciplined as  
24 required by state law.

25 27. Petitioners JANE DOE 1, JANE DOE 2, and JOHN DOE plead under fictitious names  
26 because of the personal nature of this suit and the real danger of physical or mental reprisal.  
27 Petitioners Jane Doe 1, Jane Doe 2, and John Doe fear intimidation and retaliation against themselves  
28 and/or their children for bringing this action. Thus, the circumstances justify the use of legal

1 pseudonyms. (See *Doe v. Deasy*; *Doe v. Albany Unified School District* (2010) 190 Cal.App.4th 668,  
2 685; *Doe v. Lincoln Unified School Dist.* (2010) 188 Cal.App.4th 758, 768.)

3 28. Petitioner JANE DOE 1 is a taxpaying resident of El Dorado County. Prior to March  
4 2015, Petitioner Jane Doe 1 was a taxpaying resident of Sacramento County. Petitioner Jane Doe 1 is  
5 a teacher in the River Delta Unified School District. Petitioner Jane Doe 1 has standing to sue to  
6 enforce the mandates of the Stull Act, which have a direct impact on the fundamental right to  
7 education grounded in the California Constitution. (See *Green v. Obledo* (1981) 29 Cal. 3d 126, 144  
8 (“*Green*”); *Burrtec Waste Indus., Inc. v. City of Colton* (2002) 97 Cal.App.4th 1133, 1137  
9 (“*Burrtec*”).)

10 29. Petitioner JANE DOE 2 is, and at all relevant times mentioned in this petition was, a  
11 taxpaying resident of Los Angeles County residing within the boundaries of the Inglewood Unified  
12 School District. Petitioner Jane Doe 2 is a parent of two students in the Inglewood Unified School  
13 District. Petitioner Jane Doe 2 has standing to sue to enforce the mandates of the Stull Act, which  
14 have a direct impact on the fundamental right to education grounded in the California Constitution.  
15 (See *Green, supra*, 29 Cal. 3d at p. 144; *Burrtec, supra*, 97 Cal.App.4th at p. 1137.)

16 30. Petitioner JOHN DOE is, and at all relevant times mentioned in this petition was, a  
17 taxpaying resident of Contra Costa County residing within the boundaries of the San Ramon Valley  
18 Unified School District. Petitioner John Doe is a parent of students in the San Ramon Valley Unified  
19 School District. Petitioner John Doe has standing to sue to enforce the mandates of the Stull Act,  
20 which have a direct impact on the fundamental right to education grounded in the California  
21 Constitution. (See *Green, supra*, 29 Cal. 3d at p. 144; *Burrtec, supra*, 97 Cal.App.4th at p. 1137.)

22 31. Petitioner CYNTHIA CRUTCHFIELD is, and at all relevant times mentioned in this  
23 petition was, a taxpaying resident of Solano County residing within the boundaries of the Fairfield-  
24 Suisun Unified School District. Petitioner Crutchfield is a parent of two former students in the  
25 Fairfield-Suisun Unified School District. Petitioner Crutchfield has standing to sue to enforce the  
26 mandates of the Stull Act, which have a direct impact on the fundamental right to education grounded  
27 in the California Constitution. (See *Green, supra*, 29 Cal. 3d at p. 144; *Burrtec, supra*, 97  
28 Cal.App.4th at p. 1137.)

1           32.     Petitioner KATHERINE CZUJKO is, and at all relevant times mentioned in this  
2 petition was, a taxpaying resident of Los Angeles County. Petitioner Czujko is a teacher in the Los  
3 Angeles Unified School District. Petitioner Czujko has standing to sue to enforce the mandates of the  
4 Stull Act, which have a direct impact on the fundamental right to education grounded in the  
5 California Constitution. (See *Green, supra*, 29 Cal. 3d at p. 144; *Burrtec, supra*, 97 Cal.App.4th at  
6 p. 1137.)

7           33.     Petitioner STEVE TRAYLOR is, and at all relevant times mentioned in this petition  
8 was, a taxpaying resident of San Bernardino County residing within the boundaries of the Ontario-  
9 Montclair School District. Petitioner Traylor is a parent of former students in the Ontario-Montclair  
10 School District, and a grandparent of current students in the district. Petitioner Traylor has standing  
11 to sue to enforce the mandates of the Stull Act, which have a direct impact on the fundamental right  
12 to education grounded in the California Constitution. (See *Green, supra*, 29 Cal. 3d at p. 144;  
13 *Burrtec, supra*, 97 Cal.App.4th at p. 1137.)

14           34.     Respondent ANTIOCH UNIFIED SCHOOL DISTRICT is a school district organized  
15 by the State Legislature and charged with the administration of public schools within its jurisdiction.  
16 Respondent Antioch Unified School District (“Antioch USD”) possesses those powers set forth in  
17 articles IX and XVI of the California Constitution and as otherwise set forth by the laws of the State  
18 of California.

19           35.     Respondent Superintendent DONALD GILL is delegated authority by Antioch USD  
20 pursuant to Section 35026 and otherwise. He is also the “employing authority” pursuant to Section  
21 44665, and responsible for employee evaluations under Section 44664(b).

22           36.     Respondents CLAIRE SMITH, DIANE GIBSON-GRAY, BARBARA COWAN,  
23 WALTER RUEHLIG, and DEBRA VINSON are members of the Antioch USD Board of Trustees  
24 and, as such, are responsible for ensuring Antioch USD’s compliance with the Stull Act. (Ed. Code,  
25 §§ 44660-44665.)

26           37.     Respondent CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT is a school  
27 district organized by the State Legislature and charged with the administration of public schools  
28 within its jurisdiction. Respondent Chaffey Joint Union High School District (“Chaffey Joint Union

1 High SD”) possesses those powers set forth in articles IX and XVI of the California Constitution and  
2 as otherwise set forth by the laws of the State of California.

3 38. Respondent Superintendent MAT HOLTON is delegated authority by Chaffey Joint  
4 Union High SD pursuant to Section 35026 and otherwise. He is also the “employing authority”  
5 pursuant to Section 44665, and responsible for employee evaluations under Section 44664(b).

6 39. Respondents CHARLES UHALLEY, ARTHUR BUSTAMONTE, SHARI MEGAW,  
7 SUE OVITT, and JOHN RHINEHART are members of the Chaffey Joint Union High SD Board of  
8 Trustees and, as such, are responsible for ensuring Chaffey Joint Union High SD’s compliance with  
9 the Stull Act. (Ed. Code, §§ 44660-44665.)

10 40. Respondent CHINO VALLEY UNIFIED SCHOOL DISTRICT is a school district  
11 organized by the State Legislature and charged with the administration of public schools within its  
12 jurisdiction. Respondent Chino Valley Unified School District (“Chino Valley USD”) possesses  
13 those powers set forth in articles IX and XVI of the California Constitution and as otherwise set forth  
14 by the laws of the State of California.

15 41. Respondent Superintendent WAYNE JOSEPH is delegated authority by Chino Valley  
16 USD pursuant to Section 35026 and otherwise. He is also the “employing authority” pursuant to  
17 Section 44665, and responsible for employee evaluations under Section 44664(b).

18 42. Respondents IRENE HERNANDEZ-BLAIR, ANDREW CRUZ, PAMELA FEIX,  
19 JAMES NA, and SYLVIA OROZCO are members of the Chino Valley USD Board of Education  
20 and, as such, are responsible for ensuring Chino Valley USD’s compliance with the Stull Act. (Ed.  
21 Code, §§ 44660-44665.)

22 43. Respondent EL MONTE CITY SCHOOL DISTRICT is a school district organized by  
23 the State Legislature and charged with the administration of public schools within its jurisdiction.  
24 Respondent El Monte City School District (“El Monte City SD”) possesses those powers set forth in  
25 articles IX and XVI of the California Constitution and as otherwise set forth by the laws of the State  
26 of California.

1           44.     Respondent Superintendent MARIBEL GARCIA is delegated authority by El Monte  
2 City SD pursuant to Section 35026 and otherwise. She is also the “employing authority” pursuant to  
3 Section 44665, and responsible for employee evaluations under Section 44664(b).

4           45.     Respondents ROBERTO CRUZ, CATHI EREDIA, ELIZABETH RIVAS, JESSICA  
5 ANCONA, and JENNIFER COBIAN are members of the El Monte City SD School Board and, as  
6 such, are responsible for ensuring El Monte City SD’s compliance with the Stull Act. (Ed. Code,  
7 §§ 44660-44665.)

8           46.     Respondent FAIRFIELD-SUISUN UNIFIED SCHOOL DISTRICT is a school district  
9 organized by the State Legislature and charged with the administration of public schools within its  
10 jurisdiction. Respondent Fairfield-Suisun Unified School District (“Fairfield-Suisun USD”)  
11 possesses those powers set forth in articles IX and XVI of the California Constitution and as  
12 otherwise set forth by the laws of the State of California.

13           47.     Respondent Superintendent KRIS COREY is delegated authority by Fairfield-Suisun  
14 USD pursuant to Section 35026 and otherwise. She is also the “employing authority” pursuant to  
15 Section 44665, and responsible for employee evaluations under Section 44664(b).

16           48.     Respondents DAVID ISOM, JUDY HONEYCHURCH, PAT SHAMANSKY,  
17 JONATHAN RICHARDSON, JOHN SILVA, KATHY MARIANNO, and CHRIS WILSON are  
18 adult members of the Fairfield-Suisun USD Governing Board and, as such, are responsible for  
19 ensuring Fairfield-Suisun USD’s compliance with the Stull Act. (Ed. Code, §§ 44660-44665.)

20           49.     Respondent FREMONT UNION HIGH SCHOOL DISTRICT is a school district  
21 organized by the State Legislature and charged with the administration of public schools within its  
22 jurisdiction. Respondent Fremont Union High School District (“Fremont Union High SD”) possesses  
23 those powers set forth in articles IX and XVI of the California Constitution and as otherwise set forth  
24 by the laws of the State of California.

25           50.     Respondent Superintendent POLLY BOVE is delegated authority by Fremont Union  
26 High SD pursuant to Section 35026 and otherwise. He is also the “employing authority” pursuant to  
27 Section 44665, and responsible for employee evaluations under Section 44664(b).

28

1           51. Respondents BARBARA NUNES, HUNG WEI, JEFF MOE, NANCY NEWTON,  
2 and BILL WILSON are adult members of the Fremont Union High SD Board of Trustees and, as  
3 such, are responsible for ensuring Fremont Union High SD's compliance with the Stull Act. (Ed.  
4 Code, §§ 44660-44665.)

5           52. Respondent INGLEWOOD UNIFIED SCHOOL DISTRICT is a school district  
6 organized by the State Legislature and charged with the administration of public schools within its  
7 jurisdiction. Respondent Inglewood Unified School District ("Inglewood USD") possesses those  
8 powers set forth in articles IX and XVI of the California Constitution and as otherwise set forth by  
9 the laws of the State of California.

10          53. Respondent State Trustee DONALD BRANN is delegated authority by Inglewood  
11 USD pursuant to State law and otherwise. State Superintendent of Public Instruction Tom Torlakson  
12 appointed Respondent Brann as State Trustee for Inglewood USD. Respondent Brann is thus  
13 invested with the powers of an administrator. He is effectively the "employing authority" pursuant to  
14 Section 44665, and responsible for employee evaluations under Section 44664(b).

15          54. Respondents MARGARET RICHARDS-BOWERS, CARLISS MCGEE, MELODY  
16 NGAUE-TUUHLOAKI, GRACIELA PATINO, and D'ARTAGNAN SCORZA are members of  
17 the Inglewood USD Advisory Board of Education and, as such, are responsible for ensuring  
18 Inglewood USD's compliance with the Stull Act. (Ed. Code, §§ 44660-44665.)

19          55. Respondent ONTARIO-MONTCLAIR SCHOOL DISTRICT is a school district  
20 organized by the State Legislature and charged with the administration of public schools within its  
21 jurisdiction. Respondent Ontario-Montclair School District ("Ontario-Montclair SD") possesses  
22 those powers set forth in articles IX and XVI of the California Constitution and as otherwise set forth  
23 by the laws of the State of California.

24          56. Respondent Superintendent JAMES HAMMOND is delegated authority by Ontario-  
25 Montclair SD pursuant to Section 35026 and otherwise. He is also the "employing authority"  
26 pursuant to Section 44665, and responsible for employee evaluations under Section 44664(b).

27          57. Respondents SAMUEL CROWE, MICHAEL FLORES, MAUREEN MENDOZA,  
28 ELVIA RIVAS, and ALFONSO SANCHEZ are members of the Ontario-Montclair SD Board of

1 Trustees and, as such, are responsible for ensuring Ontario-Montclair SD's compliance with the Stull  
2 Act. (Ed. Code, §§ 44660-44665.)

3 58. Respondent PITTSBURG UNIFIED SCHOOL DISTRICT is a school district  
4 organized by the State Legislature and charged with the administration of public schools within its  
5 jurisdiction. Respondent Pittsburg Unified School District ("Pittsburg USD") possesses those powers  
6 set forth in articles IX and XVI of the California Constitution and as otherwise set forth by the laws  
7 of the State of California.

8 59. Respondent Superintendent JANET SCHULZE is delegated authority by Pittsburg  
9 USD pursuant to Section 35026 and otherwise. She is also the "employing authority" pursuant to  
10 Section 44665, and responsible for employee evaluations under Section 44664(b).

11 60. Respondents GEORGE MILLER, JOE ARENIVAR, DE'SHAWN WOOLRIDGE,  
12 LAURA CANCIAMILLA, and DUANE SMITH are members of the Pittsburg USD Board of  
13 Trustees and, as such, are responsible for ensuring Pittsburg USD's compliance with the Stull Act.  
14 (Ed. Code, §§ 44660-44665.)

15 61. Respondent SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT is a school  
16 district organized by the State Legislature and charged with the administration of public schools  
17 within its jurisdiction. Respondent Saddleback Valley Unified School District ("Saddleback Valley  
18 USD") possesses those powers set forth in articles IX and XVI of the California Constitution and as  
19 otherwise set forth by the laws of the State of California.

20 62. Respondent Superintendent CLINT HARWICK is delegated authority by Saddleback  
21 Valley USD pursuant to Section 35026 and otherwise. He is also the "employing authority" pursuant  
22 to Section 44665, and responsible for employee evaluations under Section 44664(b).

23 63. Respondents SUZIE SWARTZ, GINNY FAY AITKENS, DOLORES WINCHELL,  
24 DENNIS WALSH, and AMANDA MORRELL are adult members of the Saddleback Valley USD  
25 Board of Education and, as such, are responsible for ensuring Saddleback Valley USD's compliance  
26 with the Stull Act. (Ed. Code, §§ 44660-44665.)

27 64. Respondent SAN RAMON VALLEY UNIFIED SCHOOL DISTRICT is a school  
28 district organized by the State Legislature and charged with the administration of public schools

1 within its jurisdiction. Respondent San Ramon Valley Unified School District (“San Ramon Valley  
2 USD”) possesses those powers set forth in articles IX and XVI of the California Constitution and as  
3 otherwise set forth by the laws of the State of California.

4 65. Respondent Superintendent MARY SHELTON is delegated authority by San Ramon  
5 Valley USD pursuant to Section 35026 and otherwise. She is also the “employing authority”  
6 pursuant to Section 44665, and responsible for employee evaluations under Section 44664(b).

7 66. Respondents DENISE JENISON, GREG MARVEL, MARK JEWETT, KEN MINTZ,  
8 and RACHEL HURD are members of the San Ramon Valley USD Board of Education and, as such,  
9 are responsible for ensuring San Ramon Valley USD’s compliance with the Stull Act. (Ed. Code,  
10 §§ 44660-44665.)

11 67. Respondent UPLAND UNIFIED SCHOOL DISTRICT is a school district organized  
12 by the State Legislature and charged with the administration of public schools within its jurisdiction.  
13 Respondent Upland Unified School District (“Upland USD”) possesses those powers set forth in  
14 articles IX and XVI of the California Constitution and as otherwise set forth by the laws of the State  
15 of California.

16 68. Respondent Superintendent NANCY KELLY is delegated authority by Upland USD  
17 pursuant to Section 35026 and otherwise. She is also the “employing authority” pursuant to Section  
18 44665, and responsible for employee evaluations under Section 44664(b).

19 69. Respondents P. JOSEPH LENZ, STEVE FRAZEE, LINDA ANGONA, WES  
20 FIFIELD, and MICHAEL VARELA are members of the Upland USD Board of Education and, as  
21 such, are responsible for ensuring Upland USD’s compliance with the Stull Act. (Ed. Code,  
22 §§ 44660-44665.)

23 70. Respondent VICTOR ELEMENTARY SCHOOL DISTRICT is a school district  
24 organized by the State Legislature and charged with the administration of public schools within its  
25 jurisdiction. Respondent Victor Elementary School District (“Victor Elementary SD”) possesses  
26 those powers set forth in articles IX and XVI of the California Constitution and as otherwise set forth  
27 by the laws of the State of California.

28



1 71. Respondent Superintendent JAN GONZALES is delegated authority by Victor  
2 Elementary SD pursuant to Section 35026 and otherwise. She is also the “employing authority”  
3 pursuant to Section 44665, and responsible for employee evaluations under Section 44664(b).

4 72. Respondents JOYCE CHAMBERLAIN, GABRIEL STINE, GARY ELDER, KAREN  
5 MORGAN, and CLAYTON MOORE are members of the Victor Elementary SD Board of Trustees  
6 and, as such, are responsible for ensuring Victor Elementary SD’s compliance with the Stull Act.  
7 (Ed. Code, §§ 44660-44665.)

8 73. Respondents—Antioch USD, Chaffey Joint Union High SD, Chino Valley USD, El  
9 Monte City SD, Fairfield-Suisun USD, Fremont Union High SD, Inglewood USD, Ontario-Montclair  
10 SD, Pittsburg USD, Saddleback Valley USD, San Ramon Valley USD, Upland USD, Victor  
11 Elementary SD, and their respective superintendents and governing boards—owe Petitioners a  
12 statutory duty to ensure that certificated personnel—including the superintendent, other  
13 administrators, principals, and teachers—are evaluated using multiple measures of performance  
14 related to their responsibilities, including measures related to student progress toward local standards  
15 and state-adopted academic content standards, as measured by certain state standardized tests.

16 74. Respondents further have a legal obligation not to enter into unlawful contracts with  
17 their local bargaining partners (*i.e.*, local teachers unions). Such illegal contracts violate public  
18 policy and are void *ab initio*.

19 75. Respondents, and those subject to their supervision, direction, and control, are  
20 responsible for the enforcement of the Stull Act. Except where otherwise specified, the relief  
21 requested in this action is sought against each Respondent, as well as against each Respondent’s  
22 officer’s employees, and agents, and against all persons acting in cooperation with Respondent(s),  
23 under their supervision, at their direction, or under their control.

24 **JURISDICTION AND VENUE**

25 76. This Court has jurisdiction over Petitioners’ claims. This Court is authorized to issue  
26 a writ of mandate pursuant to section 1085 of the California Code of Civil Procedure; to grant  
27 injunctive relief pursuant to sections 525, 526, and 526(a) of the California Code of Civil Procedure;  
28 and to grant declaratory relief pursuant to section 1060 of the California Code of Civil Procedure.

1 77. Venue is proper in this Court pursuant to sections 393 and 395 of the California Code  
2 of Civil Procedure. Venue is proper in Contra Costa County because at least one of the Petitioners  
3 resides in this county, and several of the Respondents—*i.e.*, Antioch USD, Pittsburg USD, San  
4 Ramon Valley USD, and each of their respective superintendents and school board members—are  
5 located in this county.

### 6 FACTUAL BACKGROUND

#### 7 **A. The Stull Act Requires School Districts to Evaluate Certificated Personnel for the** 8 **Benefit of Students**

9 78. The Stull Act, first enacted in 1971, is codified at Education Code section 44660 *et*  
10 *seq.*

11 79. In enacting the Stull Act, the California Legislature expressly declared its intent that  
12 “governing boards establish a uniform system of evaluation and assessment of the performance of all  
13 certificated personnel within each school district of the State, including schools conducted or  
14 maintained by county superintendents of education.” (Ed. Code, § 44660.) “The system shall  
15 involve the development and adoption by each school district of objective evaluation and assessment  
16 guidelines which may, at the discretion of the governing board, be uniform throughout the district.”  
17 (*Id.*)

18 80. A school district may, by mutual agreement with pertinent certificated employee  
19 unions, include in the guidelines any objective standards from the National Board for Professional  
20 Teaching Standards or any objective standards from the California Standards for the Teaching  
21 Profession. (Ed. Code, § 44661.5.)

22 81. The evaluation of certificated personnel is governed by Education Code section  
23 44662, which provides, in pertinent part:

24 (a) The governing board of each school district shall establish standards of expected pupil  
25 achievement at each grade level in each area of study.

26 (b) The governing board of each school district shall evaluate and assess certificated  
27 employee performance as it reasonably relates to:  
28

1                    *(1) The progress of pupils toward the standards established pursuant to subdivision*  
2                    *(a) and, if applicable, the state adopted academic content standards as measured by*  
3                    *state adopted criterion referenced assessments.*

4                    (2) The instructional techniques and strategies used by the employee.

5                    (3) The employee's adherence to curricular objectives.

6                    (4) The establishment and maintenance of a suitable learning environment, within the  
7                    scope of the employee's responsibilities.

8 (emphasis added.)

9                    82. Thus, the Stull Act requires that a school district (i) establish standards of expected  
10                    pupil achievement and (ii) evaluate certificated employee performance as it reasonably relates to the  
11                    progress of pupils toward those standards, as well as applicable State standards. (Ed. Code, § 44662,  
12                    subs. (a)-(b).)

13 **B. California Has Adopted and Currently Utilizes Criterion-Referenced Assessments**

14                    83. The State Board of Education has adopted academic content standards aligned with  
15                    the Common Core State Standards (CCSS) for mathematics and English-Language Arts ("ELA") &  
16                    Literacy in History/Social Studies, Science, and Technical Subjects. (California Department of  
17                    Education, Content Standards, <http://www.cde.ca.gov/be/st/ss/>.)

18                    84. Further, the State Board of Education has developed standardized tests to measure a  
19                    student's progress toward the state-adopted academic content standards.

20                    85. The State has been administering state-adopted criterion-referenced assessments to  
21                    public school students since at least 1998.

22                    **1. Standardized Testing and Reporting Program**

23                    86. The California Standardized Testing and Reporting (STAR) Program was authorized  
24                    by Senate Bill (SB) 376 in October 1997.

25                    87. From 1998 to 2013, the State administered criterion-referenced assessments through  
26                    the STAR Program.

27                    88. Under the STAR Program, California Standards Tests (CSTs)—criterion-referenced  
28                    assessments that measured the State's adopted academic content standards—were administered to

1 public school students in the State each year, and covered core content areas for each grade 2 through  
2 11. (See *Doe v. Deasy*, Modified Tentative Decision Granting Petition for Writ of Mandate, p. 5  
3 (June 12, 2012).)

4 89. STAR test results for the years 1998 through 2013 are available to the public. (See  
5 California Department of Education, Standardized Testing and Reporting (STAR) Results,  
6 <http://star.cde.ca.gov/>.)

7 90. STAR testing concluded in 2013, to make way for the arrival of the State's new  
8 testing system.

9 **2. California Assessment of Student Performance and Progress System**

10 91. On January 2, 2014, California Education Code section 60640 established the  
11 California Assessment of Student Performance and Progress (CAASPP) System of assessments. The  
12 CAASPP System replaced the STAR Program, which became inoperative on July 1, 2013.

13 92. The CAASPP System assessments measure student progress against the State's  
14 adopted academic content standards.

15 93. The CAASPP System relies exclusively on criterion-referenced, standards-aligned  
16 assessments.

17 94. A criterion-referenced assessment is a test that measures student performance against a  
18 fixed set of predetermined criteria or learning standards.

19 95. Criterion-referenced assessments show how well students are performing on specific  
20 goals or standards, rather than how their performance compares to a norm group of students  
21 nationally or locally.

22 96. With criterion-referenced assessments, it is possible that none, or all, of the examinees  
23 will reach a particular goal or performance standard.

24 97. As stated in *Doe v. Deasy*: “[A] ‘criterion-referenced content standard’ is what a  
25 proficient student in a particular subject would know. It is not a relative standard dependent on the  
26 competitive knowledge of a larger body of students. In other words, a criterion-referenced standard  
27 is what a student should know, not how well the student knows it compared to other students.” (*Doe*  
28 *v. Deasy*, Modified Tentative Decision Granting Petition for Writ of Mandate, p. 5 (June 12, 2012).)

1           98.    The CAASPP System consists of the following assessments and tools: Smarter  
2 Balanced Assessments, Alternative Assessments, Science Assessments, and Standards-based Tests in  
3 Spanish (STS).

4                           **a.    Smarter Balanced Assessments**

5           99.    Smarter Balanced Assessments consist of three components: Summative Assessments,  
6 designed for accountability purposes; Interim Assessments, designed to support teaching and learning  
7 throughout the year; and the Digital Library, designed to support classroom-based formative  
8 assessment processes.

9           100.   Summative Assessments are comprehensive end-of-year assessments of grade-level  
10 learning that measure progress toward college and career readiness.

11           101.   Summative Assessments are administered to students in grades 3 through 8 and 11 for  
12 ELA and mathematics, as part of the CAASPP System. Summative Assessments are aligned with the  
13 CCSS for ELA and mathematics. California Department of Education, Summative Assessments,  
14 <http://www.cde.ca.gov/ta/tg/sa/sbacsummative.asp>.

15           102.   Interim Assessments are specifically designed to provide the following: (i) meaningful  
16 information for gauging student progress throughout the year toward mastery of the skills measured  
17 by the Summative Assessments; and (ii) assessments of the CCSS, which can be used at strategic  
18 points during the school year.

19           103.   There are two types of Interim Assessments: Interim Comprehensive Assessments  
20 (ICAs) and Interim Assessment Blocks (IABs).

21           104.   Pursuant to California Education Code section 60642.6, Interim Assessments are  
22 available to local educational agencies for use in grades K–12. (California Department of Education,  
23 Interim Assessments, <http://www.cde.ca.gov/ta/tg/sa/sbacinterimassess.asp>.)

24           105.   The Digital Library is an online collection of resources aligned to the CCSS that  
25 support K-12 teachers in their use of formative assessment processes to adjust teaching to improve  
26 student learning. (California Department of Education, Digital Library,  
27 <http://www.cde.ca.gov/ta/tg/sa/diglib.asp>.)  
28

1 **b. Alternative Assessments**

2 106. Alternative Assessments are based on alternate achievement standards aligned with  
3 the CCSS for students with significant cognitive disabilities.

4 107. The goal of the Alternative Assessments is to ensure that students with significant  
5 cognitive disabilities achieve increasingly higher academic outcomes and leave high school ready for  
6 post-secondary options. (California Department of Education, Alternative Assessments,  
7 <http://www.cde.ca.gov/ta/tg/ca/altassessment.asp>.)

8 **c. Science Assessments**

9 108. On September 4, 2013, the State Board of Education adopted the Next Generation  
10 Science Standards (NGSS) for California Public Schools, kindergarten through Grade 12, as required  
11 by California Education Code section 60605.85.

12 109. The NGSS Appendices A–M were adopted to assist teachers in the implementation of  
13 the new science standards and to aid in the development of the new science curriculum framework.

14 110. The California Department of Education is developing assessments based on the  
15 NGSS. (California Department of Education, Science Assessments,  
16 <http://www.cde.ca.gov/ta/tg/ca/caasppscience.asp>.)

17 111. The CAASPP System includes federally required Science Assessments in grades 5, 8,  
18 and 10 (*i.e.*, California Standards Tests [CSTs], California Modified Assessment [CMA], and  
19 California Alternate Performance Assessment [CAPA]). (*Id.*)

20 **d. Standards-based Tests in Spanish**

21 112. The optional Standards-based Tests in Spanish for reading and language arts in grades  
22 2 through 11 are also part of the CAASPP System.

23 **3. California Administers Criterion-Referenced Assessments Under the**  
24 **CAASPP System**

25 113. California is presently implementing the CAASPP System. (See News Release,  
26 California Department of Education, *State Schools Chief Tom Torlakson Applauds Smooth*  
27 *Administration of New Testing System* (June 29, 2015),  
28 <http://www.cde.ca.gov/nr/ne/yr15/yr15rel54.asp>.)

1 114. Criterion-referenced assessments are being administered throughout California, and  
2 will continue to be administered to public school students each year.

3 115. Test results are provided to school districts eight weeks after their testing windows  
4 close at the end of their school year. (*Id.*)

5 116. California school districts are able to make use of CAASPP data in evaluating and  
6 assessing certificated employee performance, and they can do so without violating the Stull Act's  
7 prohibition against the use of publishers' norms. (See Ed. Code, § 44662, subd. (e).) Indeed, they  
8 are *required* to consider CAASPP state testing results by the plain terms of the Stull Act. (Ed. Code,  
9 § 44662, subd. (b)(1).)

10 **C. Respondents Refuse To Comply with the Stull Act**

11 118. Despite the Stull Act's clear mandate to include consideration of "state adopted  
12 criterion referenced assessments" when evaluating certificated employees, Respondents and their  
13 local bargaining partners have decided to explicitly prevent such consideration in their collective  
14 bargaining agreements.

15 119. Since the enactment of the Stull Act, and continuing to today, Respondents have  
16 knowingly and willingly executed unlawful collective bargaining agreements that prevent them from  
17 taking into account the actual progress of students toward standards of achievement adopted by the  
18 State when evaluating certificated personnel.

19 120. Petitioners are informed and believe, and thereon allege, that Respondents operate  
20 their school districts in compliance with their respective collective bargaining agreements. Thus,  
21 Respondents fail to comply with the Stull Act's requirement that certificated personnel be evaluated,  
22 at least in part, based on the progress of students toward state-adopted standards as measured by  
23 state-adopted criterion-referenced assessments.

24 121. As a result, Petitioners are informed and believe, and thereon allege, that certificated  
25 personnel in Respondents' districts are not being evaluated, even in part, based upon student  
26 achievement on state standardized tests, as required by state law.

27 122. The result of noncompliance with the Stull Act is a certificated employee evaluation  
28 system that enables certificated employees to receive satisfactory evaluation ratings regardless of

1 whether their students are making progress toward the standards of expected pupil achievement  
2 adopted by the District or the state-adopted academic content standards.

3 123. Accordingly, nearly 250,000 students in Respondents' school districts are being taught  
4 by educators who have not been evaluated in accordance with state law, leaving those students  
5 vulnerable to being taught by ineffective teachers who are not being properly identified as such.

6 124. **Respondent Antioch USD.** By its terms, the operative collective bargaining  
7 agreement or contract entered into between Antioch USD and its bargaining partner—Antioch  
8 Education Association—provides that “[n]o bargaining unit member shall be evaluated . . . on the  
9 basis of the scores of his/her students on standardized or norm-referenced tests.” (Agreement  
10 Between the Antioch Unified School District and Antioch Education Association/CTA/NEA, July 1,  
11 2012 – July 30, 2015, Article 28.1., [http://antiochteachers.org/wp-content/uploads/2013/08/AEA-](http://antiochteachers.org/wp-content/uploads/2013/08/AEA-AUSD-Contract-2012-2015.pdf)  
12 [AUSD-Contract-2012-2015.pdf](http://antiochteachers.org/wp-content/uploads/2013/08/AEA-AUSD-Contract-2012-2015.pdf) [last accessed July 11, 2015].)

13 125. Petitioners are informed and believe, and thereon allege, that Antioch USD abides by  
14 the terms of the contract to which it has agreed.

15 126. As a result, Respondent Antioch USD, its superintendent, and the members of its  
16 governing board have violated and continue to violate the Stull Act.

17 127. **Respondent Chaffey Joint Union High SD.** By its terms, the operative collective  
18 bargaining agreement or contract entered into between Chaffey Joint Union High SD and its  
19 bargaining partner—Associated Chaffey Teachers—provides that “[t]he evaluation of unit members  
20 . . . shall not include or be based upon . . . [s]tandardized or other District test results that measure  
21 achievement.” (Collective Bargaining Agreement Between Chaffey Joint Union High School District  
22 and Associated Chaffey Teachers, CTA/NEA, Article 15.1.10.2, [http://cjuhsd-](http://cjuhsd-ca.schoolloop.com/file/1303566391590/1309101244690/7887262273252750810.pdf)  
23 [ca.schoolloop.com/file/1303566391590/1309101244690/7887262273252750810.pdf](http://cjuhsd-ca.schoolloop.com/file/1303566391590/1309101244690/7887262273252750810.pdf) [last accessed  
24 July 11, 2015].)

25 128. Petitioners are informed and believe, and thereon allege, that Chaffey Joint Union  
26 High SD abides by the terms of the contract to which it has agreed.

27 129. As a result, Respondent Chaffey Joint Union High SD, its superintendent, and the  
28 members of its governing board have violated and continue to violate the Stull Act.



1           130.   **Respondent Chino Valley USD.** By its terms, the operative collective bargaining  
2 agreement or contract entered into between Chino Valley USD and its bargaining partner—  
3 Associated Chino Teachers—provides that “[t]he evaluation of unit members shall not include, nor  
4 be based upon, . . . [r]esults of any tests utilized for measuring progress toward the fulfillment of  
5 goals set forth in the Single School Plan.” (Agreement Between Chino Valley Unified School  
6 District and Associated Chino Teachers/CTA/NEA, Article 8.6.1.1,  
7 <http://www.associatedchinoteachers.com/wp-content/uploads/2014/12/ACT-2013-to-2016->  
8 [contract.pdf](http://www.associatedchinoteachers.com/wp-content/uploads/2014/12/ACT-2013-to-2016-) [last accessed July 11, 2015].)

9           131.   A “Single School Plan,” more commonly known as a Single Plan for Student  
10 Achievement (SPSA), is a document that sets forth a plan of actions to raise the academic  
11 performance of students. The California Department of Education requires every public school  
12 receiving federal funds to annually develop a SPSA. The plan describes goals and objectives based  
13 on each school site’s assessment data, and describes how funds will be spent to support the goals  
14 identified. The Board of education must approve the SPSA annually.

15           132.   Petitioners are informed and believe, and thereon allege, that the goals set forth in the  
16 SPSA for each school site in the Chino Valley USD are based, at least in part, on local standards of  
17 expected pupil achievement and state-adopted academic content standards.

18           133.   Petitioners are informed and believe, and thereon allege, that Chino Valley USD  
19 abides by the terms of the contract to which it has agreed.

20           134.   As a result, Respondent Chino Valley USD, its superintendent, and the members of its  
21 governing board have violated and continue to violate the Stull Act.

22           135.   **Respondent El Monte City SD.** By its terms, the operative collective bargaining  
23 agreement or contract entered into between El Monte City SD and its bargaining partner—El Monte  
24 Elementary Teachers Association—provides that “[e]valuations shall not be based on . . .  
25 [s]tandardized test results.” (Agreement By and Between El Monte Elementary Teachers Association  
26 and El Monte City School District, 2011–2013, Article XII.C.5.A,  
27 <http://web.emcsd.org/images/departments/personnel/documents/EMETA%20Agreement%202011->  
28 [2013%20revised12-17-13.pdf](http://web.emcsd.org/images/departments/personnel/documents/EMETA%20Agreement%202011-) [last accessed July 11, 2015].)

1           136. Petitioners are informed and believe, and thereon allege, that El Monte City SD abides  
2 by the terms of the contract to which it has agreed.

3           137. As a result, Respondent El Monte City SD, its superintendent, and the members of its  
4 governing board have violated and continue to violate the Stull Act.

5           138. **Respondent Fairfield-Suisun USD.** By its terms, the operative collective bargaining  
6 agreement or contract entered into between Fairfield-Suisun USD and its bargaining partner—  
7 Fairfield-Suisun Unified Teachers Association—provides that “[s]tandardized test scores shall not be  
8 used as evaluation data.” (F-SUTA Contract, July 1, 2012 – June 30, 2014, Article 10.3.e,  
9 <http://www.fsuta.org/wp-content/uploads/2013/09/F-SUTA-Contract-2012-2014.pdf> [last accessed  
10 July 11, 2015].)

11           139. Petitioners are informed and believe, and thereon allege, that Fairfield-Suisun USD  
12 abides by the terms of the contract to which it has agreed.

13           140. As a result, Respondent Fairfield-Suisun USD, its superintendent, and the members of  
14 its governing board have violated and continue to violate the Stull Act.

15           141. **Respondent Fremont Union High SD.** By its terms, the operative collective  
16 bargaining agreement or contract entered into between Fremont Union High SD and its bargaining  
17 partner—Fremont Education Association—provides that “[r]esults of standardized tests or district  
18 wide criterion-referenced tests shall not be used in the performance evaluation of a unit member,  
19 unless by agreement.” (Collective Bargaining Agreement, July 1, 2014 – June 30, 2017, Between  
20 Fremont Union High School District and Fremont Education Association, Article 14, Section XI,  
21 [http://www.feamembers.org/CBA\\_14-17\\_rev0wcover.pdf](http://www.feamembers.org/CBA_14-17_rev0wcover.pdf) [last accessed July 11, 2015].)

22           142. Petitioners are informed and believe, and thereon allege, that Fremont Union High SD  
23 abides by the terms of the contract to which it has agreed.

24           143. Petitioners are informed and believe, and thereon allege, that there are teachers within  
25 Fremont-Union High SD who have not reached any agreement with the school district that would  
26 allow the school district to evaluate them by taking into account the results of standardized tests or  
27 district wide criterion-referenced tests.

28

1           144. As a result, Respondent Fremont Union High SD, its superintendent, and the members  
2 of its governing board have violated and continue to violate the Stull Act.

3           145. **Respondent Inglewood USD.** By its terms, the operative collective bargaining  
4 agreement or contract entered into between Inglewood USD and its bargaining partner—Inglewood  
5 Teachers Association—provides that “[t]he evaluation of unit members . . . shall not include or be  
6 based upon . . . [s]tandardized achievement test results.” (Memorandum of Understanding Between  
7 Inglewood Teachers Association and Inglewood Unified School District, Article XVI.L,  
8 [http://www.inglewoodteachersassociation.org/wp-content/uploads/2011/09/ITA-IUSD-2010-2013-](http://www.inglewoodteachersassociation.org/wp-content/uploads/2011/09/ITA-IUSD-2010-2013-CBA.pdf)  
9 [CBA.pdf](http://www.inglewoodteachersassociation.org/wp-content/uploads/2011/09/ITA-IUSD-2010-2013-CBA.pdf) [last accessed July 11, 2015].)

10           146. Petitioners are informed and believe, and thereon allege, that Inglewood USD abides  
11 by the terms of the contract to which it has agreed.

12           147. As a result, Respondent Inglewood USD, its State Trustee, and the members of its  
13 governing board have violated and continue to violate the Stull Act.

14           148. **Respondent Ontario-Montclair SD.** By its terms, the operative collective bargaining  
15 agreement or contract entered into between Ontario-Montclair SD and its bargaining partner—  
16 Ontario-Montclair Teachers Association—provides that “[t]he evaluation of unit members . . . shall  
17 not include or be based upon . . . [s]tandardized test results.” (Agreement Between Ontario-Montclair  
18 School District and Ontario-Montclair Teachers Association, July 1, 2013 – June 30, 2016, Article  
19 XII.I, [http://www.myomta.org/pdf/2013\\_16Contract.pdf](http://www.myomta.org/pdf/2013_16Contract.pdf) [last accessed July 11, 2015].)

20           149. Petitioners are informed and believe, and thereon allege, that Ontario-Montclair USD  
21 abides by the terms of the contract to which it has agreed.

22           150. As a result, Respondent Ontario-Montclair USD, its superintendent, and the members  
23 of its governing board have violated and continue to violate the Stull Act.

24           151. **Respondent Pittsburg USD.** By its terms, the operative collective bargaining  
25 agreement or contract entered into between Pittsburg USD and its bargaining partner—Pittsburg  
26 Education Association—provides that “[s]tandardized test score shall not be used as evaluation data.”  
27 (PEA Master Agreement Between Pittsburg Unified School District and Pittsburg Education  
28 Association, July 1, 2011 – June 30, 2014, Article 10.13.7,

1 <http://pittsburg.schoolwires.net/cms/lib07/CA01902661/Centricity/domain/85/internal/2011-2014->  
2 [PEAContract.pdf](http://pittsburg.schoolwires.net/cms/lib07/CA01902661/Centricity/domain/85/internal/2011-2014-) [last accessed July 11, 2015].)

3 152. Petitioners are informed and believe, and thereon allege, that Pittsburg USD abides by  
4 the terms of the contract to which it has agreed.

5 153. As a result, Respondent Pittsburg USD, its superintendent, and the members of its  
6 governing board have violated and continue to violate the Stull Act.

7 154. **Respondent Saddleback Valley USD.** By its terms, the operative collective  
8 bargaining agreement or contract entered into between Saddleback Valley USD and its bargaining  
9 partner—Saddleback Valley Educators Association—provides that “[s]tudent performance on  
10 standardized tests shall not be used as part of the evaluation of teachers.” (Saddleback Valley  
11 Unified School District Agreement with Saddleback Valley Educators Association, July 1, 2013 –  
12 June 30, 2015, Article VII, Section 3.3,  
13 [http://sveaonline.weebly.com/uploads/8/6/0/7/8607988/svea\\_contract\\_2013-2015.pdf](http://sveaonline.weebly.com/uploads/8/6/0/7/8607988/svea_contract_2013-2015.pdf) [last accessed  
14 July 11, 2015].)

15 155. Petitioners are informed and believe, and thereon allege, that Saddleback Valley USD  
16 abides by the terms of the contract to which it has agreed.

17 156. As a result, Respondent Saddleback Valley USD, its superintendent, and the members  
18 of its governing board have violated and continue to violate the Stull Act.

19 157. **Respondent San Ramon Valley USD.** By its terms, the operative collective  
20 bargaining agreement or contract entered into between San Ramon Valley USD and its bargaining  
21 partner—San Ramon Valley Education Association—provides that “[t]he evaluation and assessment  
22 of employee competency shall not include the use of results from any tests.” (Contractual Agreement  
23 By and Between Board of Education of San Ramon Valley Unified School District and San Ramon  
24 Valley Education Association, California Teachers Association, National Education Association,  
25 July 1, 2013 – June 30, 2015, Article XIX, Section C.1.b.3,  
26 <http://www.srvusd.net/file/1276351911669/1258812843417/4039315675021134549.pdf> [last  
27 accessed July 11, 2015].)  
28

1           158. Petitioners are informed and believe, and thereon allege, that San Ramon Valley USD  
2 abides by the terms of the contract to which it has agreed.

3           159. As a result, Respondent San Ramon Valley USD, its superintendent, and the members  
4 of its governing board have violated and continue to violate the Stull Act.

5           160. **Respondent Upland USD.** By its terms, the operative collective bargaining  
6 agreement or contract entered into between Upland USD and its bargaining partner—Upland  
7 Teachers Association—provides that “[t]he evaluation of unit members . . . shall not include or be  
8 based upon . . . standardized achievement test results.” (Contract Between Upland Unified School  
9 District and Upland Teachers Association, Article 18.2.20,  
10 [http://www.uplandteachers.org/pdfs/contract\\_12.pdf](http://www.uplandteachers.org/pdfs/contract_12.pdf) [last accessed July 11, 2015].)

11           161. Petitioners are informed and believe, and thereon allege, that Upland USD abides by  
12 the terms of the contract to which it has agreed.

13           162. As a result, Respondent Upland USD, its superintendent, and the members of its  
14 governing board have violated and continue to violate the Stull Act.

15           163. **Respondent Victor Elementary SD.** By its terms, the operative collective bargaining  
16 agreement or contract entered into between Victor Elementary SD and its bargaining partner—Victor  
17 Elementary Teachers Association—provides that “[t]he evaluation [of teachers] shall not include the  
18 use of student scores established by standardized tests.” (Agreement Between Victor Elementary  
19 School District and Victor Elementary Teachers Association, July 1, 2013 – June 30, 2016, Article  
20 XVI.B.7, <http://vetaonline.org/wp-content/uploads/2014/07/VETA-Contract-2013-2016.pdf> [last  
21 accessed July 11, 2015].)

22           164. Petitioners are informed and believe, and thereon allege, that Victor Elementary SD  
23 abides by the terms of the contract to which it has agreed.

24           165. As a result, Respondent Victor Elementary SD, its superintendent, and the members of  
25 its governing board have violated and continue to violate the Stull Act.

26           166. In the absence of full compliance with the Stull Act, students, parents, and taxpayers  
27 cannot be reasonably assured that all students within these 13 school districts are being taught by  
28 competent and effective educators who have been properly evaluated pursuant to State law.

1 **FIRST CAUSE OF ACTION FOR WRIT OF MANDATE**

2 (Against All Respondents)

3 167. Petitioners repeat and reallege the allegations contained in paragraphs 1 through 166,  
4 above, as though set forth in full herein.

5 168. “A writ of mandate may be issued by any court to any inferior tribunal, corporation,  
6 board, or person, to compel the performance of an act which the law specially enjoins, as a duty  
7 resulting from an office, trust, or station . . . .” (Code Civ. Proc., §1085, subd. (a).)

8 169. A traditional writ of mandate under California Code of Civil Procedure section 1085 is  
9 a method of compelling the performance of a legal duty. (*Pomona Police Officers’ Assn. v. City of*  
10 *Pomona* (1997) 58 Cal.App.4th 578, 583-584.) “Generally, a writ will lie when there is no plain,  
11 speedy, and adequate alternative remedy; the respondent has a duty to perform; and the petitioner has  
12 a clear and beneficial right to performance.” (*Id.* at 584 (internal citations omitted).)

13 170. As parents of students, teachers, and taxpayers, Petitioners have a beneficial interest in  
14 improving the quality of public education in the districts where they reside and throughout the State  
15 of California. Petitioners also have a clear, present, and legal right to request that the Court compel  
16 Respondents to comply with State law.

17 171. Respondents have a clear, present, and ministerial legal duty to comply with the Stull  
18 Act, which is codified as Education Code section 44660 *et seq.* Respondents also have a present  
19 legal duty and present ability to perform their legal duty and comply with the Stull Act.

20 172. Respondents are not in compliance with the Stull Act. Moreover, Respondents refuse  
21 to comply with the Stull Act as required by California law.

22 173. Petitioners now demand that Respondents comply with the Stull Act. Specifically,  
23 Petitioners demand that Respondents (i) comply with the Stull Act by implementing a comprehensive  
24 program of evaluating certificated employees’ performance in accordance with specified mandated  
25 elements, including but not limited to pupil progress as it reasonably relates to the standards of  
26 expected pupil achievement at each grade level in each area of study as established by each District  
27 and, if applicable, the state-adopted academic content standards as measured by state-adopted  
28 criterion-referenced assessments; (ii) refrain from complying with or entering into any agreement,

1 with local teachers unions or otherwise, that includes an evaluation system that does not fully comply  
2 with the Stull Act or that delays or otherwise prevents Respondents from implementing a  
3 comprehensive program of evaluating certificated employees' performance as required by the Stull  
4 Act; and (iii) immediately evaluate, in full compliance with the Stull Act, *all* applicable certificated  
5 personnel regardless of permanent employment status.

6 174. Petitioners have no other plain, speedy, or adequate legal remedy to compel  
7 Respondents to perform their mandatory legal duties as alleged above. There are no administrative  
8 remedies to exhaust. Only through this proceeding may Petitioners receive the remedy or remedies  
9 due to them in a timely fashion.

10 **SECOND CAUSE OF ACTION FOR INJUNCTIVE RELIEF**

11 (Against All Respondents)

12 175. Petitioners repeat and reallege the allegations contained in paragraphs 1 through 174,  
13 above, as though set forth in full herein.

14 176. Petitioners seek an injunction to force Respondents to implement a comprehensive  
15 program of evaluating certificated employees' performance in accordance with specified mandated  
16 elements, including but not limited to pupil progress as it reasonably relates to the standards of  
17 expected pupil achievement at each grade level in each area of study as established by each District  
18 and, if applicable, the state-adopted academic content standards as measured by state-adopted  
19 criterion-referenced assessments. In other words, Petitioners seek an injunction forcing Respondents  
20 to use state-adopted criterion-referenced assessments (*i.e.*, standardized test scores) whenever  
21 applicable in the evaluation of certificated employee performance, as required by state law.

22 177. Petitioners seek an injunction to prevent the enforcement of the provisions of  
23 Respondents' operative collective bargaining agreements that violate the Stull Act, and to prevent the  
24 enactment of any subsequent collective bargaining agreements that violate the Stull Act.

25 178. Petitioners seek an injunction to force Respondents to immediately evaluate, in full  
26 compliance with the Stull Act, all applicable certificated personnel, regardless of permanent  
27 employment status.

28

1                            **THIRD CAUSE OF ACTION FOR DECLARATORY RELIEF**

2                                        (Against All Respondents)

3            179.    Petitioners repeat and reallege the allegations contained in paragraphs 1 through 178,  
4 above, as though set forth in full herein.

5            180.    Petitioners seek a declaration that any components of existing and tentatively proposed  
6 collective bargaining agreements, including any memoranda of understanding, entered into by  
7 Respondents that address evaluations of certificated employees in a manner that fails to comply with  
8 the Stull Act—specifically provisions that prevent school districts from taking into account criterion-  
9 referenced standardized test scores when evaluating certificated employees—are knowing and willful  
10 violations of the Stull Act and are, therefore, null and void as a matter of law.

11                                        **PRAYER FOR RELIEF**

12            WHEREFORE, Petitioners pray for judgment and other relief as follows:

13            1.            A writ of mandate or other appropriate writ or order commanding Respondents to  
14 immediately comply with California Education Code section 44660 *et seq.*, by, *inter alia*,  
15 implementing a comprehensive system of evaluating applicable certificated employees' performance  
16 in accordance with specified mandated elements, including, but not limited to, pupil progress as it  
17 reasonably relates to the standards of expected pupil achievement at each grade level in each area of  
18 study as established by each District and, if applicable, the state-adopted academic content standards  
19 as measured by state-adopted criterion-referenced assessments;

20            2.            A writ of mandate or other appropriate writ or order commanding Respondents to  
21 refrain from complying with or entering into any agreement, with local teachers unions or otherwise,  
22 that includes an evaluation system that does not fully comply with the Stull Act or that delays or  
23 otherwise prevents Respondents from implementing a comprehensive program of evaluating  
24 certificated employees' performance as required by the Stull Act;

25            3.            A writ of mandate or other appropriate writ or order commanding Respondents to  
26 immediately evaluate, in full compliance with the Stull Act, *all* applicable certificated personnel  
27 regardless of permanent employment status;  
28



1           4.     An injunction forcing Respondents to use state-adopted criterion-referenced  
2 assessments whenever applicable in the evaluation of certificated employee performance, as required  
3 by state law;

4           5.     An injunction preventing the enforcement of the current provisions of Respondents'  
5 collective bargaining agreements that violate the Stull Act;

6           6.     An injunction forcing Respondents to immediately evaluate, in full compliance with  
7 the Stull Act, all applicable certificated personnel, regardless of permanent employment status.

8           7.     A declaration that the current and proposed collective bargaining agreements and  
9 associated memoranda of understanding between Respondents and their local teachers unions,  
10 respectively, violate the Stull Act in that each agreement currently does not allow or require lawful,  
11 complete certificated employee evaluations, and further that these agreements preclude Respondents'  
12 full compliance in the future to ensure proper performance evaluations are conducted for certificated  
13 personnel, as applicable;

14           8.     A declaration that the current and proposed collective bargaining agreements and  
15 associated memoranda of understanding between the Respondents and their local teachers unions,  
16 respectively, are null and void in their entirety or to the extent that they do not comply with the Stull  
17 Act;

18           9.     All costs of bringing this suit; and

19           10.    Attorney fees under California Code of Civil Procedure section 1021.5 or other  
20 applicable California law.

21  
22 Respectfully submitted,

23 Dated: July 16, 2015

GIBSON, DUNN & CRUTCHER LLP

24  
25 By: Theodore J. Boutrous, Jr. / PCS

Theodore J. Boutrous, Jr.

26 Attorneys for Petitioners and Plaintiffs  
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**VERIFICATION**

I, the undersigned, do hereby declare as follows:

I am one of the Petitioners and Plaintiffs in this action. I have read the above Verified Petition for Writ of Mandate or Other Appropriate relief; Verified Complaint for Injunctive and Declaratory Relief ("Petition and Complaint"), and know its contents. The facts alleged in the Petition and Complaint are true of my own personal knowledge, except as to matters which are stated therein on information and belief, and as to those matters I believe them to be true.

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

Executed this 15 day of July, 2015, in Fairfield, California.

By:   
Cynthia Crutchfield

# Exhibit

# A

**State of California**

**EDUCATION CODE**

**TITLE 2. ELEMENTARY AND SECONDARY EDUCATION**

**DIVISION 3. LOCAL ADMINISTRATION**

**PART 25. EMPLOYEES**

**CHAPTER 3. CERTIFICATED EMPLOYEES**

**Article 11. Evaluation and Assessment of Performance of Certificated Employees**

**§ 44660**

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44660. It is the intent of the Legislature that governing boards establish a uniform system of evaluation and assessment of the performance of all certificated personnel within each school district of the state, including schools conducted or maintained by county superintendents of education. The system shall involve the development and adoption by each school district of objective evaluation and assessment guidelines which may, at the discretion of the governing board, be uniform throughout the district or, for compelling reasons, be individually developed for territories or schools within the district, provided that all certificated personnel of the district shall be subject to a system of evaluation and assessment adopted pursuant to this article.

This article does not apply to certificated personnel who are employed on an hourly basis in adult education classes.

(Enacted by Stats. 1976, Ch. 1010.)

**State of California**  
**EDUCATION CODE**  
**TITLE 2. ELEMENTARY AND SECONDARY EDUCATION**  
**DIVISION 3. LOCAL ADMINISTRATION**  
**PART 25. EMPLOYEES**  
**CHAPTER 3. CERTIFICATED EMPLOYEES**  
**Article 11. Evaluation and Assessment of Performance of Certificated Employees**  
**§ 44661**

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44661. In the development and adoption of guidelines and procedures pursuant to this article, the governing board shall avail itself of the advice of the certificated instructional personnel in the district's organization of certificated personnel; provided, however, that the development and adoption of guidelines pursuant to this article shall also be subject to the provisions of Article 1 (commencing with Section 7100) of Chapter 2 of Part 5 of Division 1 of Title 1.

(Enacted by Stats. 1976, Ch. 1010.)

**State of California**

**EDUCATION CODE**

**TITLE 2. ELEMENTARY AND SECONDARY EDUCATION**

**DIVISION 3. LOCAL ADMINISTRATION**

**PART 25. EMPLOYEES**

**CHAPTER 3. CERTIFICATED EMPLOYEES**

**Article 11. Evaluation and Assessment of Performance of Certificated Employees**

**§ 44661**

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44661.5. When developing and adopting objective evaluation and assessment guidelines pursuant to Section 44660, a school district may, by mutual agreement between the exclusive representative of the certificated employees of the school district and the governing board of the school district, include any objective standards from the National Board for Professional Teaching Standards or any objective standards from the California Standards for the Teaching Profession if the standards to be included are consistent with this article. If the certificated employees of the school district do not have an exclusive representative, the school district may adopt objective evaluation and assessment guidelines consistent with this section.

(Added by Stats. 1999, Ch. 279, Sec. 2. Effective January 1, 2000.)

**State of California**

**EDUCATION CODE**

**TITLE 2. ELEMENTARY AND SECONDARY EDUCATION**

**DIVISION 3. LOCAL ADMINISTRATION**

**PART 25. EMPLOYEES**

**CHAPTER 3. CERTIFICATED EMPLOYEES**

**Article 11. Evaluation and Assessment of Performance of Certificated Employees**

**§ 44662**

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44662. (a) The governing board of each school district shall establish standards of expected pupil achievement at each grade level in each area of study.

(b) The governing board of each school district shall evaluate and assess certificated employee performance as it reasonably relates to:

(1) The progress of pupils toward the standards established pursuant to subdivision (a) and, if applicable, the state adopted academic content standards as measured by state adopted criterion referenced assessments.

(2) The instructional techniques and strategies used by the employee.

(3) The employee's adherence to curricular objectives.

(4) The establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities.

(c) The governing board of each school district shall establish and define job responsibilities for certificated noninstructional personnel, including, but not limited to, supervisory and administrative personnel, whose responsibilities cannot be evaluated appropriately under the provisions of subdivision (b) and shall evaluate and assess the performance of those noninstructional certificated employees as it reasonably relates to the fulfillment of those responsibilities.

(d) Results of an employee's participation in the Peer Assistance and Review Program for Teachers established by Article 4.5 (commencing with Section 44500) shall be made available as part of the evaluation conducted pursuant to this section.

(e) The evaluation and assessment of certificated employee performance pursuant to this section shall not include the use of publishers' norms established by standardized tests.

(f) Nothing in this section shall be construed as in any way limiting the authority of school district governing boards to develop and adopt additional evaluation and assessment guidelines or criteria.

(Amended by Stats. 1999, 1st Ex. Sess., Ch. 4, Sec. 4. Effective June 25, 1999.)

**State of California**

**EDUCATION CODE**

**TITLE 2. ELEMENTARY AND SECONDARY EDUCATION**

**DIVISION 3. LOCAL ADMINISTRATION**

**PART 25. EMPLOYEES**

**CHAPTER 3. CERTIFICATED EMPLOYEES**

**Article 11. Evaluation and Assessment of Performance of Certificated Employees**

**§ 44663**

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44663. (a) Evaluation and assessment made pursuant to this article shall be reduced to writing and a copy thereof shall be transmitted to the certificated employee not later than 30 days before the last schoolday scheduled on the school calendar adopted by the governing board for the school year in which the evaluation takes place. The certificated employee shall have the right to initiate a written reaction or response to the evaluation. This response shall become a permanent attachment to the employee's personnel file. Before the last schoolday scheduled on the school calendar adopted by the governing board for the school year, a meeting shall be held between the certificated employee and the evaluator to discuss the evaluation.

(b) In the case of a certificated noninstructional employee, who is employed on a 12-month basis, the evaluation and assessment made pursuant to this article shall be reduced to writing and a copy thereof shall be transmitted to the certificated employee no later than June 30 of the year in which the evaluation and assessment is made. A certificated noninstructional employee, who is employed on a 12-month basis shall have the right to initiate a written reaction or response to the evaluation. This response shall become a permanent attachment to the employee's personnel file. Before July 30 of the year in which the evaluation and assessment takes place, a meeting shall be held between the certificated employee and the evaluator to discuss the evaluation and assessment.

(Amended by Stats. 1986, Ch. 393, Sec. 1.)



**State of California**

**EDUCATION CODE**

**TITLE 2. ELEMENTARY AND SECONDARY EDUCATION**

**DIVISION 3. LOCAL ADMINISTRATION**

**PART 25. EMPLOYEES**

**CHAPTER 3. CERTIFICATED EMPLOYEES**

**Article 11. Evaluation and Assessment of Performance of Certificated Employees**

**§ 44664**

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44664. (a) Evaluation and assessment of the performance of each certificated employee shall be made on a continuing basis as follows:

- (1) At least once each school year for probationary personnel.
- (2) At least every other year for personnel with permanent status.

(3) At least every five years for personnel with permanent status who have been employed at least 10 years with the school district, are highly qualified, if those personnel occupy positions that are required to be filled by a highly qualified professional by the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301, et seq.), as defined in 20 U.S.C. Sec. 7801, and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree. The certificated employee or the evaluator may withdraw consent at any time.

(b) The evaluation shall include recommendations, if necessary, as to areas of improvement in the performance of the employee. If an employee is not performing his or her duties in a satisfactory manner according to the standards prescribed by the governing board, the employing authority shall notify the employee in writing of that fact and describe the unsatisfactory performance. The employing authority shall thereafter confer with the employee making specific recommendations as to areas of improvement in the employee's performance and endeavor to assist the employee in his or her performance. If any permanent certificated employee has received an unsatisfactory evaluation, the employing authority shall annually evaluate the employee until the employee achieves a positive evaluation or is separated from the district.

(c) Any evaluation performed pursuant to this article which contains an unsatisfactory rating of an employee's performance in the area of teaching methods or instruction may include the requirement that the certificated employee shall, as determined necessary by the employing authority, participate in a program designed to improve appropriate areas of the employee's performance and to further pupil achievement and the instructional objectives of the employing authority. If a district participates in the Peer Assistance and Review Program for Teachers established pursuant to Article 4.5 (commencing with Section 44500), any certificated employee who receives an unsatisfactory rating on an evaluation performed pursuant to this section shall participate in the Peer Assistance and Review Program for Teachers.

(d) Hourly and temporary hourly certificated employees, other than those employed in adult education classes who are excluded by the provisions of Section 44660, and substitute teachers may be excluded from the provisions of this section at the discretion of the governing board.

(Amended by Stats. 2005, Ch. 677, Sec. 28. Effective October 7, 2005.)

**State of California**  
**EDUCATION CODE**  
**TITLE 2. ELEMENTARY AND SECONDARY EDUCATION**  
**DIVISION 3. LOCAL ADMINISTRATION**  
**PART 25. EMPLOYEES**  
**CHAPTER 3. CERTIFICATED EMPLOYEES**  
**Article 11. Evaluation and Assessment of Performance of Certificated Employees**  
**§ 44665**

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44665. For purposes of this article, “employing authority” means the superintendent of the school district in which the employee is employed, or his designee, or in the case of a district which has no superintendent, a school principal or other person designated by the governing board.

(Enacted by Stats. 1976, Ch. 1010.)

Exhibit

B

**FILED**  
Superior Court of California  
County of Los Angeles

DAUG 27 2014 *[Signature]*

Sherri A. Carter, Executive Officer/Clerk  
By *[Signature]* K. Mason Deput

1  
2 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
3 COUNTY OF LOS ANGELES  
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5 BEATRIZ VERGARA, a minor, by Alicia ) Case No.: BC484642  
6 Martinez, as her guardian ad litem, et )  
7 al, )  
8 Plaintiffs, ) JUDGMENT  
9 vs. )  
10 STATE OF CALIFORNIA, et al, ) Dept. 58  
11 Defendants ) Judge Rolf M. Treu  
12 CALIFORNIA TEACHERS ASSOCIATION, et )  
13 al, )  
14 Intervenor )  
15

16 Sixty years ago, in Brown v. Board of Education (1954) 347 U.S. 483,  
17 the United States Supreme Court held that public education facilities  
18 separated by race were inherently unequal, and that students subjected to  
19 such conditions were denied the equal protection of the laws under the 14<sup>th</sup>  
20 Amendment to the United States Constitution. In coming to its conclusion,  
21 the Court significantly noted:

22 Today, education is perhaps the most important function of state  
23 and local governments. Compulsory school attendance laws and the  
24 great expenditures for education both demonstrate our recognition  
25 of the importance of education to our democratic society. It is  
26 required in the performance of our most basic public  
27 responsibilities, even service in the armed forces. It is the  
28 very foundation of good citizenship. Today it is a principal  
instrument in awakening the child to cultural values, in  
preparing him for later professional training, and in helping him  
to adjust normally to his environment. In these days, it is  
doubtful than any child may reasonably be expected to succeed in  
life if he is denied the opportunity of an education. Such an  
opportunity, where the state has undertaken to provide it, is a  
**right** which must be made available to all on equal terms.  
Id. at 493 (Emphasis added).

1 In Serrano v. Priest (1971) 5 Cal.3d 584 (hereinafter Serrano I) and  
2 Serrano v. Priest (1976) 18 Cal.3d 728 (hereinafter Serrano II), the  
3 California Supreme Court held education to be a "fundamental interest" and  
4 found the then-existing school financing system to be a violation of the  
5 equal protection clause of the California Constitution, holding that:

6 Under the strict standard applied in such (suspect  
7 classifications or fundamental interests) cases, the state bears  
8 the burden of establishing not only that it has a *compelling*  
9 interest which justifies the law but that the distinctions drawn  
10 by the law are *necessary* to further its purpose.  
11 Serrano II, at 761 (quoting Serrano I, at 597 (Original  
12 emphasis)).

13 In Butt v. State of California (1992) 4 Cal.4th 668, the California  
14 Supreme Court held that a school district's six-week-premature closing of  
15 schools due to revenue shortfall deprived the affected students of their  
16 fundamental right to basic equality in public education, noting:

17 It therefore appears well settled that the California  
18 Constitution makes public education uniquely a fundamental  
19 concern of the State and prohibits maintenance and operation of  
20 the public school system in a way which denies **basic educational**  
21 **equality** to the students of particular districts. The State  
22 itself bears the ultimate authority **and** responsibility to ensure  
23 that its district-based system of common schools provides **basic**  
24 **equality of educational opportunity**.  
25 Id. at 685 (Emphasis added).

26 What Brown, Serrano I and II, and Butt held was that unconstitutional  
27 laws and policies would not be permitted to compromise a student's  
28 fundamental right to equality of the educational experience. Proscribed  
29 were: 1) Brown: racially based segregation of schools; 2) Serrano I and II:  
30 funding disparity; and 3) Butt: school term length disparity. While these  
31 cases addressed the issue of a lack of **equality** of educational **opportunity**  
32 based on the discrete facts raised therein, here this Court is directly faced  
33 with issues that compel it to apply these constitutional principles to the  
34 **quality** of the educational experience.

1  
2 Plaintiffs are nine California public school students who, through  
3 their respective *guardians ad litem*, challenge five statutes of the  
4 California Education Code, claiming said statutes violate the equal  
5 protection clause of the California Constitution. The allegedly offending  
6 statutes are: 44929.21(b) ("Permanent Employment Statute"); 44934,  
7 44938(b)(1) and (2) and 44944 (collectively "Dismissal Statutes"); and 44955  
8 ("Last-In-First Out (LIFO)"). Collectively, these statutes will be referred  
9 to as the "Challenged Statutes".

10  
11 Plaintiffs claim that the Challenged Statutes result in grossly  
12 ineffective teachers obtaining and retaining permanent employment, and that  
13 these teachers are disproportionately situated in schools serving  
14 predominately low-income and minority students. Plaintiffs' equal protection  
15 claims assert that the Challenged Statutes violate their fundamental rights  
16 to equality of education by adversely affecting the quality of the education  
17 they are afforded by the state.

18  
19 This Court is asked to directly assess how the Challenged Statutes  
20 affect the educational experience. It must decide whether the Challenged  
21 Statutes cause the potential and/or unreasonable exposure of grossly  
22 ineffective teachers to all California students in general and to minority  
23 and/or low income students in particular, in violation of the equal  
24 protection clause of the California Constitution.

25  
26 This Court finds that Plaintiffs have met their burden of proof on all  
27 issues presented.

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**PROCEDURAL HISTORY**

This action was filed on May 14, 2012; on August 15, 2012, the currently operative First Amended Complaint for Declaratory and Injunctive Relief was filed against defendants 1) State of California; 2) Edmund G. Brown, Jr., in his official capacity as Governor of California; 3) Tom Torkelson, in his official capacity as State Superintendent of Public Instruction; 4) California Department of Education; 5) State Board of Education (1-5 hereinafter are collectively referred to as "State Defendants"); 6) Los Angeles Unified School District (LAUSD); 7) Oakland Unified School District (OUSD); and 8) Alum Rock Union School District (ARUSD).

On November 9, 2012, this Court, through written opinion, overruled demurrers filed by State Defendants and ARUSD. Thereupon, it indicated that controlling questions of law involving substantial grounds for difference of opinion existed and that appellate resolution may materially advance conclusion of litigation, pursuant to California Code of Civil Procedure 166.1, thus inviting appellate review of its rulings on the demurrers. On December 10, 2012, Defendants filed a petition for writ of mandate with the Court of Appeal, which issued a stay of all proceedings in this Court on December 18. On January 29, 2013, the Court of Appeal denied the relief requested by Defendants, returning the matter to this Court for further proceedings.

On May 2, 2013, this Court, recognizing the legitimate and immediate interests in this litigation of the California Teachers Association and the California Federation of Teachers (collectively "Intervenors"), granted their respective motions to intervene, thereby allowing them to become fully vested



1 parties herein and allowing the presentation of the legal positions of the  
2 widest-possible range of interested parties.

3  
4 (This Court stresses legal positions intentionally. It is not  
5 unmindful of the current intense political debate over issues of education.  
6 However, its duty and function as dictated by the Constitution of the United  
7 States, the Constitution of the State of California and the Common Law, is to  
8 avoid considering the political aspects of the case and focus only on the  
9 legal ones. That this Court's decision will and should result in political  
10 discourse is beyond question but such consequence cannot and does not detract  
11 from its obligation to consider only the evidence and law in making its  
12 decision.

13  
14 It is also not this Court's function to consider the wisdom of the  
15 Challenged Statutes. As the Supreme Court of California stated in In re  
16 Marriage Cases (2008) 43 Cal.4th 757 at 780:

17 It is also important to understand at the outset that our task in  
18 this proceeding is not to decide whether we believe, as a matter  
19 of policy, that the officially recognized relationship of a same-  
20 sex couple should be designated a marriage rather than a domestic  
21 partnership (or some other term), but instead only to determine  
22 whether the difference in the official names of the relationships  
23 violates the California Constitution.  
24 (Original emphasis).

25 While judges of this country and state do not leave their personal  
26 opinions at the courthouse door every morning, it is incumbent upon them not  
27 to let such opinions color their view of the cases before them that day. The  
28 Supreme Court goes on:

29 Whatever our views as individuals with regard to this question as  
30 a matter of policy, we recognize as judges and as a court our  
31 responsibility to limit our consideration of the question to a  
32 determination of the constitutional validity of the current  
33 legislative provisions.  
34 In re Marriage Cases, at 780.)

1  
2 Plaintiffs voluntarily dismissed with prejudice: 1)ARUSD on September  
3 13, 2013; 2)LAUSD on September 18; and 3)OUSD on December 23.  
4

5 On December 13, 2013, by written opinion, this Court denied State  
6 Defendants'/Intervenors' motions for Summary Judgment/Summary Adjudication.  
7 Moving parties sought reversal of this ruling from the Court of Appeal  
8 through petition for writ of mandate/prohibition and request for stay of  
9 proceedings. This relief was summarily denied by the Court of Appeal on  
10 January 14, 2014, thus returning the matter to this Court for further  
11 proceedings, including trial.  
12

13 Trial commenced January 27, 2014. Motions for judgment pursuant to CCP  
14 631.8 made by State Defendants/Intervenors after Plaintiffs rested were  
15 denied March 4. The trial concluded with oral argument on March 27 and with  
16 final written briefs filed on April 10, at which time the matter stood  
17 submitted to this Court for decision.  
18

19 **ANALYSIS**  
20

21 Since the Challenged Statutes are alleged to violate the California  
22 Constitution, the pertinent provisions thereof are set forth:

23 Article 1, sec. 7(a): "A person may not be deprived of life,  
24 liberty, or property without due process of law or denied equal  
protection of the laws ... ."

25 Article 9, sec. 1: "A general diffusion of knowledge and  
26 intelligence being essential to the preservation of the rights  
27 and liberties of the people, the Legislature shall encourage by  
all suitable means the promotion of intellectual, scientific ...  
improvement."  
28

1 Article 9, sec. 5: "The Legislature shall provide for a system of  
2 common schools by which a free school shall be kept up and  
supported in each district ... ."

3 In Serrano I and II and Butt, supra, an overarching theme is  
4 paradigmized: the Constitution of California is the ultimate guarantor of a  
5 meaningful, basically equal educational opportunity being afforded to the  
6 students of this state.

7  
8 State Defendants' exhibit 1005, "California Standards for the Teaching  
9 Profession" (CSTP) (2009) in its opening sentence declares: "A growing body of  
10 research confirms that the **quality of teaching** is what matters most for the  
11 students' development and learning in schools." (Emphasis added).

12  
13 All sides to this litigation agree that competent teachers are a  
14 critical, if not the most important, component of **success** of a child's in-  
15 school educational experience. All sides also agree that grossly ineffective  
16 teachers substantially **undermine** the ability of that child to succeed in  
17 school.

18  
19 Evidence has been elicited in this trial of the specific effect of  
20 grossly ineffective teachers on students. The evidence is compelling.  
21 Indeed, it shocks the conscience. Based on a massive study, Dr. Chetty  
22 testified that a single year in a classroom with a grossly ineffective  
23 teacher costs students \$1.4 million in lifetime earnings per classroom.  
24 Based on a 4 year study, Dr. Kane testified that students in LAUSD who are  
25 taught by a teacher in the bottom 5% of competence lose 9.54 months of  
26 learning in a single year compared to students with average teachers.

1           There is also no dispute that there are a significant number of grossly  
2 ineffective teachers currently active in California classrooms. Dr.  
3 Berliner, an expert called by State Defendants, testified that 1-3% of  
4 teachers in California are grossly ineffective. Given that the evidence  
5 showed roughly 275,000 active teachers in this state, the extrapolated number  
6 of grossly ineffective teachers ranges from 2,750 to 8,250. Considering the  
7 effect of grossly ineffective teachers on students, as indicated above, it  
8 therefore cannot be gainsaid that the number of grossly ineffective teachers  
9 has a direct, real, appreciable, and negative impact on a significant number  
10 of California students, now and well into the future for as long as said  
11 teachers hold their positions.

12  
13           Within the framework of the issues presented, this Court must now  
14 determine what test is to be applied in its analysis. It finds that based on  
15 the criteria set in Serrano I and II and Butt, and on the evidence presented  
16 at trial, Plaintiffs have proven, by a preponderance of the evidence, that  
17 the Challenged Statutes impose a real and appreciable impact on students'  
18 fundamental right to equality of education and that they impose a  
19 disproportionate burden on poor and minority students. Therefore the  
20 Challenged Statutes will be examined with "strict scrutiny", and State  
21 Defendants/Intervenors must "bear[] the burden of establishing not only that  
22 [the State] has a *compelling* interest which justifies [the Challenged  
23 Statutes] but that the distinctions drawn by the law[s] are *necessary* to  
24 further [their] purpose." Serrano I, 5 Cal.3d at 597 (Original emphasis).

25  
26           PERMANENT EMPLOYMENT STATUTE  
27  
28

1           The California "two year" statute is a misnomer to begin with. The  
2 evidence established that the decision not to reelect must be formally  
3 communicated to the teacher on or before March 15 of the second year of the  
4 teacher's employment. This deadline already eliminates 2-3 months of the  
5 "two year" period. In order to meet the March 15 deadline, reelection  
6 recommendations must be placed before the appropriate deciding authority well  
7 in advance of March 15, so that in effect, the decision whether or not to  
8 reelect must be made even earlier. Bizarrely, the beneficial effects of the  
9 induction program for new teachers, which lasts an entire two school years  
10 and runs concurrently with the Permanent Employment Statute, cannot be  
11 evaluated before the time the reelection decision has to be made. Thus, a  
12 teacher reelected in March may not be recommended for credentialing after the  
13 close of the induction program in May, leaving the applicable district with a  
14 non-credentialed teacher with tenure. State Defendants' PMQ Linda Nichols  
15 testified that this would leave the district with a "real problem because now  
16 you are not a credentialed teacher; and therefore, you cannot teach." She  
17 further opined that State Superintendent of Education Tom Torlakson "clearly  
18 believes, you know it would theoretically be great" to have the tenure  
19 decision made after induction was over.

20  
21           There was extensive evidence presented, including some from the  
22 defense, that, given this statutorily-mandated time frame, the Permanent  
23 Employment Statute does not provide nearly enough time for an informed  
24 decision to be made regarding the decision of tenure (critical for both  
25 students and teachers). As a result, teachers are being reelected who would  
26 not have been had more time been provided for the process. Conversely,  
27 startling evidence was presented that in some districts, including LAUSD, the  
28 time constraint results in **non**-reelection based on "any doubt," thus

1 depriving 1) teachers of an adequate opportunity to establish their  
2 competence, and 2) students of potentially competent teachers. Brigitte  
3 Marshall, OUSD's Associate Superintendent for Human Resources, testified that  
4 these are "high stakes" decisions that must be "well-grounded and well  
5 founded."

6  
7 This Court finds that **both** students and teachers are unfairly,  
8 unnecessarily, and for no legally cognizable reason (let alone a **compelling**  
9 one), disadvantaged by the current Permanent Employment Statute. Indeed,  
10 State Defendants' experts Rothstein and Berliner each agreed that 3-5 years  
11 would be a better time frame to make the tenure decision for the mutual  
12 benefit of students and teachers.

13  
14 Evidence was admitted that nation-wide, 32 states have a three year  
15 period, and nine states have four or five. California is one of only five  
16 outlier states with a period of two years or less. Four states have no  
17 tenure system at all.

18  
19 This Court finds that the burden required to be carried under the  
20 strict scrutiny test has not been met by State Defendants/Intervenors, and  
21 thus finds the Permanent Employment statute unconstitutional under the equal  
22 protection clause of the Constitution of California. This Court enjoins its  
23 enforcement.

24  
25 DISMISSAL STATUTES

26  
27 Plaintiffs allege that it is too time consuming and too expensive to go  
28 through the dismissal process as required by the Dismissal Statutes to rid

1 school districts of grossly ineffective teachers. The evidence presented was  
2 that such time and cost constraints cause districts in many cases to be very  
3 reluctant to even commence dismissal procedures.

4  
5 The evidence this Court heard was that it could take anywhere from two  
6 to almost ten years and cost \$50,000 to \$450,000 or more to bring these cases  
7 to conclusion under the Dismissal Statutes, and that given these facts,  
8 grossly ineffective teachers are being left in the classroom because school  
9 officials do not wish to go through the time and expense to investigate and  
10 prosecute these cases. Indeed, defense witness Dr. Johnson testified that  
11 dismissals are "extremely rare" in California because administrators believe  
12 it to be "impossible" to dismiss a tenured teacher under the current system.  
13 Substantial evidence has been submitted to support this conclusion.

14  
15 This state of affairs is particularly noteworthy in view of the  
16 admitted number of grossly ineffective teachers currently in the system  
17 across the state (2750-8250), and of the evidence that LAUSD alone had 350  
18 grossly ineffective teachers it wished to dismiss at the time of trial  
19 regarding whom the dismissal process had not yet been initiated.

20  
21 State Defendants/Intervenors raise the entirely legitimate issue of due  
22 process. However, given the evidence above stated, the Dismissal Statutes  
23 present the issue of *über* due process. Evidence was presented that  
24 classified employees, fully endowed with due process rights guaranteed under  
25 Skelly v. State Personnel Board (1975) 15 Cal.3d 194, had their discipline  
26 cases resolved with much less time and expense than those of teachers.  
27 Skelly holds that a position, such as that of a classified or certified  
28 employee of a school district, is a property right, and when such employee is

1 threatened with disciplinary action, due process attaches. However, that due  
2 process requires a balancing test under Skelly as discussed at pages 212-214  
3 of the opinion. After this analysis, Skelly holds at page 215:

4 [D]ue process does mandate that the employee be accorded certain  
5 procedural rights before the discipline becomes effective. As a  
6 minimum, these preremoval safeguards must include notice of the  
7 proposed action, the reasons therefore, a copy of the charges and  
8 materials upon which the action is based, and the right to  
9 respond, either orally or in writing, to the authority imposing  
10 discipline.

11 Following the hearing of the administrative agency, of course, the  
12 employee has the right of a further multi-stage appellate review process by  
13 the independent courts of this state to assess whether the factual  
14 determinations are supported by substantial evidence.

15 The question then arises: does a school district classified employee  
16 have a lesser property interest in his/her continued employment than a  
17 teacher, a certified employee? To ask the question is to answer it. This  
18 Court heard no evidence that a classified employee's dismissal process (i.e.,  
19 a Skelly hearing) violated due process. Why, then, the need for the current  
20 tortuous process required by the Dismissal Statutes for teacher dismissals,  
21 which has been decried by both plaintiff and defense witnesses? This is  
22 particularly pertinent in light of evidence before the Court that teachers  
23 themselves do not want grossly ineffective colleagues in the classroom.

24 This Court is confident that the independent judiciary of this state is  
25 no less dedicated to the protection of reasonable due process rights of  
26 teachers than it is of protecting the rights of children to constitutionally  
27 mandated equal educational opportunities.



1 State Defendants/Intervenors did not carry their burden that the  
2 procedures dictated by the Dismissal Statutes survive strict scrutiny. There  
3 is no question that teachers should be afforded reasonable due process when  
4 their dismissals are sought. However, based on the evidence before this  
5 Court, it finds the current system required by the Dismissal Statutes to be  
6 so complex, time consuming and expensive as to make an effective, efficient  
7 yet fair dismissal of a grossly ineffective teacher illusory.

8  
9 This Court finds that the burden required to be carried under the  
10 strict scrutiny test has not been met by State Defendants/Intervenors, and  
11 thus finds the Dismissal Statutes unconstitutional under the equal protection  
12 clause of the Constitution of California. This Court enjoins their  
13 enforcement.

14  
15 LIFO

16  
17 This statute contains no exception or waiver based on teacher  
18 effectiveness. The last-hired teacher is the statutorily-mandated first-fired  
19 one when lay-offs occur. No matter how gifted the junior teacher, and no  
20 matter how grossly ineffective the senior teacher, the junior gifted one, who  
21 all parties agree is creating a positive atmosphere for his/her students, is  
22 separated from them and a senior grossly ineffective one, who all parties  
23 agree is harming the students entrusted to her/him, is left in place. The  
24 result is classroom disruption on two fronts, a lose-lose situation.  
25 Contrast this to the junior/efficient teacher remaining and a  
26 senior/incompetent teacher being removed, a win-win situation, and the point  
27 is clear.

1 Distilled to its basics, the State Defendants'/Intervenors' position  
2 requires them to defend the proposition that the state has a compelling  
3 interest in the *de facto* separation of students from competent teachers, and  
4 a like interest in the *de facto* retention of incompetent ones. The logic of  
5 this position is unfathomable and therefore constitutionally unsupportable.

6  
7 The difficulty in sustaining Defendants'/Intervenors' position may  
8 explain the fact that, as with the Permanent Employment Statute, California's  
9 current statutory LIFO scheme is a distinct minority among other states that  
10 have addressed this issue. 20 states provide that seniority **may** be  
11 considered among other factors; 19 (including District of Columbia) leave the  
12 layoff criteria to district discretion; two states provide that seniority  
13 cannot be considered, and only 10 states, including California, provide that  
14 seniority is the sole factor, or one that must be considered.

15  
16 This Court finds that the burden required to be carried under the  
17 strict scrutiny test has not been met by State Defendants/Intervenors, and  
18 thus finds the LIFO statute unconstitutional under the equal protection  
19 clause of the Constitution of California. This Court enjoins its  
20 enforcement.

21 EFFECT ON LOW INCOME/ MINORITY STUDENTS

22  
23 Substantial evidence presented makes it clear to this Court that the  
24 Challenged Statutes disproportionately affect poor and/or minority students.  
25 As set forth in Exhibit 289, "Evaluating Progress Toward Equitable  
26 Distribution of Effective Educators," California Department of Education,  
27 July 2007:

1 Unfortunately, the most vulnerable students, those attending  
2 high-poverty, low-performing schools, are far more likely than  
3 their wealthier peers to attend schools having a disproportionate  
4 number of underqualified, inexperienced, out-of-field, and  
ineffective teachers and administrators. Because minority  
children disproportionately attend such schools, minority  
students bear the brunt of staffing inequalities.

5 The evidence was also clear that the churning (aka "Dance of the  
6 Lemons) of teachers caused by the lack of effective dismissal statutes and  
7 LIFO affect high-poverty and minority students disproportionately. This in  
8 turn, greatly affects the stability of the learning process to the detriment  
9 of such students.

10  
11 Alexander Hamilton wrote in Federalist Paper 78: "For I agree there is  
12 no liberty, if the power of judging be not separated from the legislative and  
13 executive powers." Under California's separation of powers framework, it is  
14 not the function of this Court to dictate or even to advise the legislature  
15 as to how to replace the Challenged Statutes. All this Court may do is apply  
16 constitutional principles of law to the Challenged Statutes as it has done  
17 here, and trust the legislature to fulfill its mandated duty to enact  
18 legislation on the issues herein discussed that passes constitutional muster,  
19 thus providing each child in this state with a basically equal opportunity to  
20 achieve a quality education.

21 //

22 //

23 //

24 //

25 //

26 //

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28 //

1           It is therefore the Judgment of this Court that all Challenged Statutes  
2 are unconstitutional for the reasons set forth hereinabove. All injunctions  
3 issued are ordered stayed pending appellate review.

4  
5  
6    Dated this 27<sup>th</sup> day of August, 2014

7  
8    \_\_\_\_\_  
9    Treu, J.

Exhibit

C

Modified

FILED  
Superior Court of California  
County of Los Angeles

Doe et al. v. Deasy et al.  
BS 134604

Tentative Decision on Petition for Writ of  
Mandate: granted

JUN 12 2012

John A. Clarke, Executive Officer/Clerk  
By ~~A. L. ...~~, Deputy  
ANNETTE FAJARDO

Petitioners apply for a writ of traditional mandamus directing Respondent, Los Angeles Unified School District, its Superintendent, and its Board of Education (collectively the "District" or "LAUSD") to comply with the Stull Act by including pupil progress, as it reasonably relates to the standards of expected pupil achievement at each grade level, in its performance evaluations of certificated employees. The court has read and considered the moving papers,<sup>1</sup> oppositions, and reply, held a June 5, 2012 hearing concerning preliminary matters, and renders the following tentative decision.

**A. Statement of the Case**

Petitioner Alice Callaghan and several anonymous petitioners (minor students in LAUSD and their guardians *ad litem*) commenced this proceeding on November 1, 2011. The Verified Amended Petition for Writ of Mandate, filed on November 18, 2011, is the operative pleading. It seeks traditional mandamus to compel the District to meet its obligations under a forty year old law, Education Code section 44660 *et seq.*, commonly referred to as the "Stull Act," which mandates that the District implement and enforce periodic evaluations of certificated personnel.

According to the Petition, the Stull Act, originally enacted in 1971, requires that the governing board of each school district establish standards of expected pupil achievement at each grade level in each area of study. The Stull Act requires further that the governing board of each school district also evaluate and assess the performance of certificated employees as it reasonably relates to the progress of pupils toward the standards adopted by the district locally. The "evaluate and assess" aspect of the Stull Act was expanded in 1999 to mandate additional pupil progress measures in the assessment of certificated employees' performance: pupil progress toward the State adopted academic content standards as measured by State adopted assessments.

The Petition alleges that the District currently fails to comply with its obligation to evaluate certificated employees based in part on pupil performance.

Although the initial Petition named as Real Parties-in-Interest the United Teachers Los Angeles ("UTLA" or the "Teachers Union"), the Associated Administrators of Los Angeles ("AALA" or the "Administrators Union"), and the Public Employment Relations Board ("PERB"), the Amended Petition did not. On November 21, 2011, the court ordered that the unions be re-joined as Real Parties-in-Interest and granted PERB leave to intervene by joint stipulation. PERB submitted a stipulation and proposed complaint in intervention, and the court approved it as an intervening party.

**B. Standard of Review**

"A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is

<sup>1</sup>The application of Los Angeles Mayor Antonio R. Villaraigosa for leave to file an *amicus* brief is granted. The court has read and considered his brief.

unlawfully precluded by such inferior tribunal, corporation, board, or person.” CCP §1085(a).

A traditional writ of mandate under CCP section 1085 is a method of compelling the performance of a legal, usually ministerial duty. Pomona Police Officers’ Assn. v. City of Pomona, (1997) 58 Cal.App.4th 578, 583-84. “Generally, a writ will lie when there is no plain, speedy, and adequate alternative remedy; the respondent has a duty to perform; and the petitioner has a clear and beneficial right to performance.” Id. at 584 (internal citations omitted). When an administrative decision is reviewed under CCP section 1085, judicial review is limited to an examination of the proceedings before the agency to determine whether its action was arbitrary, capricious, or entirely lacking in evidentiary support, or whether it did not follow the procedure and give the notices required by law. Ibid.

### **C. The Stull Act<sup>2</sup>**

First enacted in 1971, the Stull Act is codified at Education Code section 44660 *et seq.*<sup>3</sup>

---

<sup>2</sup>Petitioners did not present their evidence in proper form. In support of their motion, Petitioners rely principally on a 324-page request for judicial notice and a 619-page Declaration of Scott J. Witlin, which includes many exhibits. None of the exhibits is separated by a hard exhibit tab. *See* CRC 3.1110(f). Despite this defect, the court will consider this evidence if admissible.

Petitioners ask the court to judicially notice (1) certain legislative history of the Stull Act, (2) the State Board of Education’s February 9-10, 1972 minutes, (3) the Department of Education’s Three Year Plan for Assessments, 2002, (4) the District’s Guidelines for Instruction, Secondary, 2001, (5) the District’s CST Periodic Assessment Chart, (6) the California Commission on State Mandates’ September 27, 2005 Decision regarding Parameters and Guidelines, and (7) District claims to the State Controller’s Office for various years. All but the last are subject to judicial notice as official acts of an agency. (Ev. Code §452(c). Not every action by an agency qualifies as an official act. The District’s claims to the State Controller are not official acts, and the request to judicially notice them is denied.

In reply, Petitioners ask the court to judicially notice a U.S. Department of Education publication concluding that 38 states have adopted “student growth” as a factor in teacher evaluations. The publication is an official act under Ev. Code section 452(c), and the request is granted.

The Teachers Union asks the court to judicially notice portions of the legislative history of the Stull Act and its amendments. The request is granted. Ev. Code §452(b).

~~ATLA~~ The Teachers Union objects to some of Petitioners’ exhibits on grounds of relevance. The court agrees that some of the evidence presented by Petitioners, as well as other parties, is of marginal relevance, relating mostly to background or collateral issues. Nonetheless, the court cannot say the evidence is completely irrelevant and the objections are overruled.

The ~~Teachers Union~~ also objects to portions of the Deasy deposition. The UTLA fails to quote the testimony to which it objects, and the court has no obligation to perform the task of looking up the citations. The objections are overruled in their entirety.

<sup>3</sup>All further code references are to the Education Code unless specified otherwise.

Therein, the Legislature expressly declared its intent that “governing boards establish a uniform system of evaluation and assessment of the performance of all certificated personnel within each school district of the State, including schools conducted or maintained by county superintendents of education.” §44660. The system shall involve the development and adoption by each school district of objective evaluation and assessment guidelines which may, at the discretion of the governing board, be uniform throughout the district. *Ibid.*

The school district may, through the mutual agreement with the pertinent certificated employee unions, include in the guidelines any objective standards from the National Board for Professional Teaching Standards or objective standards from the California Standards for the Teaching Profession in the guidelines. §44661.5.

The evaluation of certificated personnel is governed by section 44662, and provides, in pertinent part:

“(a) [t]he governing board of each school district shall establish standards of expected pupil achievement at each grade level in each area of study.

(b) The governing board of each school district shall evaluate and assess certificated employee performance as it reasonably relates to:

(1) The progress of pupils toward the standards established pursuant to subdivision (a) and, if applicable, the state adopted academic content standards as measured by state adopted criterion referenced assessments.

(2) The instructional techniques and strategies used by the employee.

(3) The employee’s adherence to curricular objectives.

(4) The establishment and maintenance of a suitable learning environment, within the scope of the employee’s responsibilities.

(c) The governing board of each school district shall establish and define job responsibilities for certificated noninstructional personnel, including, but not limited to, supervisory and administrative personnel, whose responsibilities cannot be evaluated appropriately under the provisions of subdivision (b) and shall evaluate and assess the performance of those noninstructional certificated employees as it reasonably relates to the fulfillment of those responsibilities.”<sup>4</sup>

Thus, the Stull Act requires that a school district (1) establish standards of expected pupil achievement and (2) evaluate certificated employee performance as it “reasonably relates” to the progress of pupils toward those standards, as well as applicable State standards. §44662(a), (b)(1). With respect to administrative personnel, the Stull Act recognizes that some or all “noninstructional personnel” cannot be evaluated based on student progress, instructional techniques, adherence to curricular objectives, and establishment and maintenance of a suitable learning environment. School districts must establish and define job responsibilities for those employees, and evaluate and assess their performance as it relates to the fulfillment of those defined responsibilities.

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<sup>4</sup>The legislative history provides that section 44662 “[r]equires school district governing boards to evaluate certificated employee performance on the progress of pupils toward the state-adopted academic content standards as measured by state-adopted criterion referenced assessments.” UTLA RJN 171-72.



The Stull Act requires that the evaluation be reduced to writing (§44663), and occur at least every year for probationary personnel, every other year for permanent personnel, and every five years for highly qualified personnel who have been employed for ten years or more. §44664(a).

The evaluation must include recommendations, if necessary, as to areas in which the employee needs improvement. §44664(b). If an employee is not performing duties in a satisfactory manner, the school district must notify the employee of that fact in writing and describe the unsatisfactory performance, and also confer with the employee and make specific recommendations as to areas of improvement and endeavor to assist the employee in his or her performance. *Ibid.* If a permanent certificated employee receives an unsatisfactory evaluation, the district must annually evaluate the employee until he or she achieves a positive evaluation or is separated from the district. *Ibid.* Moreover, if the school district participates in the Peer Assistance and Review Program for Teachers, any certificated employee who receives an unsatisfactory rating on an evaluation must participate in that program. §44664(c).<sup>5</sup>

Pursuant to decision by the California Commission on State Mandates, a school district may obtain reimbursement from the State for the costs incurred for compliance with the 1999 amendment to the Stull Act concerning teacher and administrator evaluation based on pupil performance. Pet. RJN Ex.F.

#### **D. Statement of Facts**

The following pertinent<sup>6</sup> facts have been presented by the parties.

##### **1. The District**

LAUSD is a school district within the meaning of the Stull Act. Each year, the District serves over 650,000 K- 12 students, at over 1,000 school sites throughout Los Angeles County. The District is subdivided into multiple Local Districts, each serving a designated region.

John Deasy (“Deasy”) is LAUSD’s superintendent. He is delegated authority by the District under section 35026, and is the “employing authority” responsible for evaluations of “certificated employees.” §§ 44664(b), 44665.

The term “certificated employees” means employees who by law are required to have a certificate or credential to be eligible for employment. Certificated personnel may be

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<sup>5</sup>The Stull Act was amended in 1995 and again in 1999, when then Speaker, now Los Angeles Mayor Villaraigosa sponsored an amendment to section 44662(b)(1), imposing the requirement that teachers and administrators be evaluated based on the “progress of pupils toward state adopted academic content standards as measured by state adopted criterion referenced assessments.”

Section 44661.5 -- which permits a school district to include in the certificated personnel evaluation system required by section 44660 any objective standards created by certain teaching entities through mutual agreement with pertinent employee unions -- was enacted at the same time as the 1999 amendment to the Stull Act

<sup>6</sup>The following section does not discuss the evidence on background and collateral issues.

instructional (teachers) and non-instructional (administrators and management). In the schools, there are three categories of certificated employees: (1) teachers, (2) support staff (school psychologists, counselors, school nurses, teacher advisors, and certain others), and (3) management, consisting of principals and assistant principals. In addition, counsel clarified at the June 5, 2012 hearing that some certificated administrative and/or management personnel work outside of schools in the Local Districts and are subject to the Stull Act's evaluation requirements. For convenience, the court will refer to in-school certificated instructional personnel as "teachers" and the rest of the certificated personnel subject to the Stull Act, whether management or administrators, in-school or outside of school in Local District offices, as "administrators."

## **2. The State and Local Standards**

The State has "criterion-referenced" content standards for ~~secondary~~ students. As clarified by counsel on June 5, a "criterion-referenced content standard" is what a proficient student in a particular subject would know. It is not a relative standard dependent on the competitive knowledge of a large body of students. In other words, a criterion-referenced standard is what a student should know, not how well the student knows it compared to other students.

The State Board of Education has developed tests to measure a student's progress toward these State standards. *See* §60642.5; Pet. RJN Ex. C. These tests, also known as assessments, are part of the California Standardized Testing and Reporting Program ("STAR").

The principle set of STAR tests pertinent to this case is the California Standards Tests ("CSTs"). The CSTs are given to public school students in the State each year, and cover core content areas for each of grades 2 to 11. There is not yet a CST for every subject in every grade, and the CSTs also are not given to non-English speaking students. The parties agree that the CSTs are "criterion referenced assessments" that measure the State's "adopted academic content standards." *See* §44662.

The Department of Education annually conducts the CSTs at LAUSD schools. The CSTs are conducted at the District's traditional calendar and special education schools during the month of May, but the District and its schools do not receive the results of the tests until August.<sup>7</sup>

The District has established its own standards of expected pupil grade level achievement in various content areas. Pet. RJN Ex. D at p. 4. Beginning approximately in 1996, LAUSD conducted a major review of District-adopted standards. As the State-adopted standards came online, the District periodically revisited its local standards of expected pupil achievement and modified its local standards accordingly.<sup>8</sup> As it modified its standards, LAUSD provided its certificated staff with side-by-side comparisons of District-adopted standards with State-adopted

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<sup>7</sup>The Stull Act evaluation process must be completed by the end of the school year and the District's school year ends in June.

<sup>8</sup>District counsel stated at the June 5 hearing that the District's standards can vary from the State standards, but was unsure whether the District must view the State standards as a minimum. *See* Deasy Depo. at 124-25.

standards and related State and District assessments. *Id.*; Pet. RJN Ex. E.<sup>9</sup>

The District performs tests of student progress toward its standards at least three times per year.

### **3. The District's Teacher Evaluation System**

The District maintains a system of evaluation and assessment of the performance of teachers and administrators. Under the District's system, teachers are evaluated by school administrators, and school administrators are evaluated by higher-level management personnel.

This evaluation system has been in existence for many years and conducted prior to the end of every school year. An evaluation conducted under this system is informally known as a "Stull evaluation." The form used for evaluating the District's teachers is informally known as a "Stull form." The guide used by school administrators in completing that form is known as the "Stull Performance Indicators." Bowes Decl., Ex.E.

The District evaluates the performance of teachers and administrators (i) at least once each year for probationary employees, (ii) at least every other year for permanent employees, and (iii) at least every five years for permanent employees who have been employed at least 10 years with the District and who are highly qualified, by mutual agreement between the employee and the evaluator.

The District's performance evaluation system is described in a series of bulletins and guides issued by the District, and is implemented by the use of several standard forms, including the following: (1) Initial Planning Sheets (Bowes Decl., Exs. F, G); (2) Observation/Conference Sheets (Bowes Decl., Exs. H, I); and (3) Final Evaluation Forms (Bowes Decl., Exs. J, K).

#### **a. The Initial Planning Sheet**

The Stull evaluation process is a year-long endeavor, beginning with completion of the Initial Planning Sheet. A big part of the final Stull evaluation is providing teachers with recommendations for improving their craft and, thereby, improving student performance. The Initial Planning Sheet contains teacher objectives under the headings (1) Support for Student Learning, (2) Planning and Designing Instruction, (3) Classroom Performance, (4) Developing as a Professional Educator, and (5) Punctuality, Attendance and Record Keeping. Bowes Decl., Ex.E. The Initial Planning Sheet contains an area for discussion of strategies to meet these objectives. *Ibid.* The Initial Planning Sheet does not include any direct reference to pupil progress.

At the beginning of the school year, teachers and administrators draft objectives and goals in the Initial Planning Sheet, which are based in part on student data. Student test results from the previous year inform the teacher what work needs to be done, which is plotted on the Initial Planning Sheet. The teacher and his or her administrator collaborate on preparing the Initial Planning Sheet. They extract information from the test results to guide the objectives mapped out on the Initial Planning Sheet. The teacher is later evaluated on whether or not he or she met the objectives on the Initial Planning Sheet, the point of which is to improve the teacher's

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<sup>9</sup>Exhibit E is actually a side-by-side comparison of the formulas for creation of the tests used to measure progress toward the respective State and District standards.

teaching and his or her students' performance.

Throughout each school year, the District tests pupils by the use of periodic District-level school-level, and classroom level tests. The data collected from these tests is used to guide instruction and advise teachers on how to help students progress toward proficiency on the District's academic standards. Once trends and patterns are identified, teachers are assisted in developing goals to improve student scores in identified areas of need, such as improving the delivery of instruction in a certain area.

#### **b. The School Year Tracking of Teachers**

During the year, school principals track the teachers' progress toward achieving the goals established during the Initial Planning Sheet. They do this by meeting with teachers to discuss the results of the District's periodic assessments, observing teachers in the classroom, and facilitating department-level "data chats." These data chats involve conversations on a department-level (i.e., math or English), in which the student test results are analyzed, areas of need are identified and strategies, and best practices are discussed and shared.

Additionally, student test results can sometimes be a "red flag" in identifying teachers who may be struggling. A struggling teacher's problems often are shown through other problems, such as in the classroom environment, delivery of instruction, and adherence to the curriculum. The test results are used to counsel the teacher and improve his or her teaching. Principals have conversations throughout the school year with teachers regarding their performance as informed by their students test results.

In evaluating teachers, school administrators look to patterns of deficit over time as reflected in student data in order to identify areas of need. For examples, the principal might identify the fact that the test results for students in a teacher's class show a pattern of comprehension deficit. The principal will provide the teacher with guidance and counseling on ways to improve the general student comprehension deficit. The teacher will then be evaluated on whether the teacher effectively implemented the methodologies to improve this comprehension deficit. By improving the teacher's teaching methodologies, the students should perform better and progress toward achieving proficiency of State and District standards. Thus, student test results are regularly used as a tool in teacher-development.

#### **c. The Final Evaluation**

At the close of the school year, teachers are evaluated in part based on whether they have met the goals described in the Initial Planning Sheet. A teacher's year-end final evaluation includes assessment of the teacher's (i) instructional techniques and strategies; (ii) adherence to instructional objectives; and (iii) maintenance of a suitable learning environment. In completing the final evaluation form (Ex. J), the administrator is required to evaluate the teacher as to 27 separate "areas of evaluation," including the following:

- Uses the result of multiple assessments to guide instruction;
- Guides all students to be self-directed and assess their own learning;
- Engages students in problem solving, critical thinking and other activities that make subject matter meaningful;

- Uses a variety of instructional strategies and resources to respond to student’s diverse needs;
- Demonstrates evidence of short-term and long-term plans to foster student learning and achievement of the State standards;
- Uses State subject matter content standards to establish rigorous learning goals for students;
- Interrelates ideas and information within and across subject matter areas;
- Uses instructional strategies, materials, resources, and technologies that are appropriate to the subject matter;
- Demonstrates knowledge of State Standards and student development;
- Uses a grading/evaluation system that is aligned with State Standards; and
- Plans and implements classroom procedures and routines that support student learning.

The final evaluation form does not expressly include any factor of pupil progress. For each area of evaluation on the form, the school administrator is required to check one of three boxes: (a) “Meets;” (b) “Needs Improvement;” or (c) “No.” If a teacher has participated in the Peer Assistance and Review Program for Teachers (known as “PAR”) described in Education Code section 44500 *et seq.*, the results of that participation are added to the evaluation form by the administrator. If improvement is needed in a teacher’s performance, the evaluator includes recommendations on the evaluation form as to the needed areas of improvement.

The evaluation is reduced to writing and given to the teacher, who is given an opportunity to submit a response. The evaluation and response are attached to the teacher’s personnel file, and a meeting is customarily held between the administrator and the teacher to discuss the evaluation before the end of the school year.<sup>10</sup>

**4. The Evaluation of Administrators**

The District has established job responsibilities for its administrators.<sup>11</sup> When the performance of an administrator is evaluated, the evaluator takes into account factors that the District deems to be “reasonably related” to the fulfillment of these job responsibilities. The administrator final evaluation form includes the following areas of evaluation:

- Oral communication, written communication;
- Analysis, judgment, decisiveness, extra-organizational sensitivity;
- Planning and organizing, delegation and follow-up;
- Development of staff members, leadership and influence, instructional leadership; and
- Initiative/innovation.

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<sup>10</sup>Occasionally, the final evaluation is mailed to the teacher if he or she is on leave of absence, declines to meet, or it was not feasible to hold the meeting for some other reason. Even under those circumstances, the teacher is entitled to submit a response for the personnel file.

<sup>11</sup>As discussed above, the court is defining the term “administrator” to include all certificated non-teaching personnel inside and outside of schools, including principals and assistant principals.

The evaluation of an administrator follows a similar procedure to that identified for a teacher.

### **5. The AGT System**

The District has concluded that pupil progress on the CSTs over a number of years should be a significant factor in the evaluation of teachers. The District created a metric that allows it to track, measure, and link student achievement on the CSTs to specific teachers. The District is now in the process of phasing in the metric — known as Academic Growth over Time (“AGT”).

The AGT system entails significant changes in the District’s evaluation system and will affect thousands of teachers and hundreds of administrators. The District’s management has devoted much of the last two school years (2010-11 and 2011-12) to the research and development of the system followed by extensive testing of the new evaluation procedures by volunteers and related training. The District intends to test AGT on a “no stakes” basis (meaning the evaluation can have no negative repercussions for the teacher or administrator) in all of its schools during the upcoming school year (2012-13) (Phase II of the “Pilot Program”). District management believes it is prudent to delay implementation of AGT on a “full stakes” basis until the additional year of testing and training has been completed.

No teachers or administrators are currently being evaluated under the AGT System except on a no stakes basis.

### **6. The Superintendent’s Testimony**

Superintendent Deasy testified in his deposition in pertinent part as follows.

The CSTs are “the California assessments that we use, so they are the state testing as part of the STAR testing program.” Deasy Depo. at 64. STAR tests are criterion-referenced assessments (academic knowledge standard), as opposed to norm-referenced assessments (measured against other students). Deasy Depo. at 64-65.

The District has adopted standards which add to, but cannot subtract from, State standards on student promotion and graduation. Deasy Depo. at 124-25.

In the current system, there is a planning session between the administrator and teacher, then there is observation of the teacher in the classroom, and there is a conference afterwards. Deasy Depo. at 126. Administrators evaluating teachers do not have any regular or uniform training. Deasy Depo. at 126-27.

There are four Stull Performance Indicators used in the teacher evaluation process: (1) “support for student learning....-- using a variety of instructional strategies to respond to students’ adverse needs;” (2) “planning and designing instruction - - for example,...demonstrates evidence of short-term and long-term plans to foster student learning;” (3) “classroom performance. Demonstrates a knowledge of state standards and uses the grading and evaluation system that’s aligned to Los Angeles;” and (4) “developing . . . as a professional educator; how you communicate, how you collaborate, do you perform your adjunct duties, et cetera.” Deasy Depo. at 60-61.

The current system of teacher evaluation “does not have a discrete component by which teachers are provided information as part of the evaluation process, using student outcome and student achievement indicators over time.” Deasy Depo. at 25. There is no uniform process to

include any student achievement in teacher evaluations. Deasy Depo. at 25. Student progress is not contained in the Initial Planning Sheet. Deasy Depo. at 99-100. The teacher final evaluation form also does not contain formation about pupil progress in the teacher's classroom. Deasy Depo. at 104. While there is some expectation that a teacher will make pedagogical changes to instruction, the District does not currently evaluate teachers by how students do academically. AR 67. Student academic outcomes are used to adjust instruction. Ibid. But in terms of the teachers' year-end performance evaluation, "It's not used." Deasy Depo at 67, 69.

"We do not currently construct evaluations of teachers by using how students do over time in terms of their academic outcomes." Deasy Depo. at 66-67. "[T]he current system doesn't best serve adults or students." Deasy Depo. at 34. "The system itself that we currently use is absent kind of the fundamental goal of the whole process of an education, and that is how do students do." Deasy Depo. at 35.

Similarly, student achievement is not used in the evaluations for administrators. Deasy Depo. at 25-26.

The Pilot Program is being conducted on a "no stakes" basis for the volunteer principal and teacher participants. "No stakes" means "that the volunteer participants will not be negatively evaluated during the test year [based] upon the quality of their implementation of the pilot activities." Deasy Depo. at 55. The reason for a "no stakes" Pilot Program is to maximize the learning curve before full implementation, ease the nervousness of those subject to the AGT evaluation, and avoid running two systems at the same time. Deasy Depo. at 32-34.

There are numerous differences between the current system and the Pilot Program. Deasy Depo at 22-23. In the Pilot Program, one component is student achievement over time. Deasy Depo. at 23-24. The teacher evaluators "go through a lengthy training, and they actually get certificated that they have a level of competency to master the framework for learning." Deasy Depo. at 23-24. The volunteer teacher and administrator participants in the Pilot Program are exempt from evaluation under the current evaluation system.

~~The current collective bargaining agreement between the District and the unions does not allow for teachers and administrators to be evaluated regarding the progress of pupils.~~ UTLA has expressed hostility toward incorporating student test data in teacher evaluations. Deasy Depo. at 118. UTLA warned its members: "if your administrator makes any indication or comments on your Stull evaluation that ties your evaluation to student test scores in any way, talk to your chapter chair who will then contact your school and UTLA representative." Deasy Depo. at 115. This struck Deasy in a negative way, who "thought we were supposed to always be talking about how students are doing. That's the fundamental business we're in, is how students do." Deasy Depo. at 115.

### **E. Jurisdiction**

Real Parties UTLA and AALA and Intervenor PERB contend that the court does not have subject matter jurisdiction over the Petitioners' claim. They argue that PERB has exclusive initial jurisdiction.

Subject matter jurisdiction is a defense that is never waived, despite delay or failure to object. People v. National Auto. & Cas. Ins. Co., (2000) 82 Cal.App.4th 120, 125. A judgment rendered by a court that lacks subject matter jurisdiction is simply void. Marlow v. Campbell,

(1992) 7 Cal.App.4th 921, 928.

### **1. PERB's Jurisdiction**

Codified at Government Code section 3540 *et seq.*, the Educational Employees Relations Act ("EERA") is the statutory scheme governing labor relations in California's public schools (kindergarten through 12th grade) and community colleges. The evaluation of certificated employees is a matter that is the subject of collective bargaining pursuant to Govt. Code section 3543.2(a).

PERB is the expert administrative agency charged with interpreting and administering EERA and has exclusive jurisdiction over the initial determination of whether charges of unfair labor practices are justified, and if so, the remedy necessary to effectuate the purposes of EERA. Gov. Code §3541.5.<sup>12</sup> PERB was created to avoid "numerous superior courts throughout the state interpreting and implementing statewide labor policy inevitably with conflicting results...." Public Employment Relations Board v. Modesto City Schools District, ("Modesto") (1982) 136 Cal.App.3d 881, 895.

Judicial review of PERB decisions involving claims of unfair practices must be presented in the first instance in the court of appeal. "Any charging party . . . aggrieved by a final decision or order of the board in an unfair practice case. . . may petition for a writ of extraordinary relief from such decision or order." Govt. Code §3542(b). "Such petition shall be filed in the district court of appeal in the appellate district where the . . . unfair practice dispute occurred." Govt. Code §3542(c). Tex-Cal Land Management v. Agriculture Labor Relations Board, (1979) 24 Cal.3d 335, 345-46.

Public policy is best served if PERB retains exclusive initial jurisdiction over any action which is arguably prohibited or protected by EERA. Modesto, supra, 136 Cal.App.3d at 894. In addition to being arguably prohibited or protected, the controversy presented to the state court must be identical to that which could have been presented to PERB. El Rancho Unified School District v. National Education Assn., ("El Rancho") (1983) 33 Cal.3d 946, 956. Only where the controversy is identical is there a risk of interference with the unfair labor practice jurisdiction of PERB. Ibid.

### **2. The Unions' Unfair Labor Practice Claims**

In May 2011, the Teachers Union filed an unfair labor practice charge with PERB alleging that the District intended to implement changes to the evaluation procedures for

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<sup>12</sup>PERB also administers six other statutory schemes governing California public-sector labor relations: the Meyers-Milias-Brown Act (Govt Code §3500 *et seq.*) (local government); Ralph C. Dills Act (Govt. Code §3512 *et seq.*) (State government); Higher Education Employer-Employee Relations Act (Govt. Code §3560 *et seq.*) (CSU System, the UC System, and Hastings College of Law); Trial Court Employment Protection & Governance Act and Trial Court Interpreter Employment & Labor Relations Act (Govt. Code §71600 *et seq.*, 71800 *et seq.*) (trial courts); and Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (Pub. Utilities Code §99560 *et seq.*) (supervisory employees of the transit agency).



administrators without collectively bargaining those changes. Specifically, the District had developed the Pilot Program based on the AGT System to evaluate teachers based in part on student performance, and was soliciting volunteers for the program. Despite the UTLA's demand that this issue be collectively bargained, the District continued to solicit teacher volunteers for the program.

Also in May 2011, the Administrators Union filed an unfair labor practice claim with PERB over the Pilot Program. The Administrators Union subsequently settled with the District and withdrew its claim. In order to implement Phase II of the Pilot Program, the District and the Administrators Union entered into a September 2011 memorandum of understanding providing for use of AGT on a test "no stakes" basis in the upcoming school year. Phase III remains to be negotiated, and would involve larger-scale implementation of the AGT system.

On December 1, 2011, the UTLA and the District jointly asked PERB to stay its proceedings while they negotiated the Pilot Program issue. PERB granted this request, and its case remains stayed pending completion of the negotiations.

### **3. PERB's Argument**

PERB makes the principal jurisdictional argument that Petitioners' claim is preempted. It argues that the District and the two unions are subject to EERA and within PERB's jurisdiction. PERB Opp. at 7. It notes that the scope of mandatory bargaining under EERA expressly includes "the procedures to be used for the evaluation of employees." Govt. Code §3543.2(a). A school district may not unilaterally change any subject within the scope of mandatory bargaining without committing an unfair labor practice. See Oakland Unified School District v. Public Employment Relations Board, (1981) 120 Cal.App.3d 1007, 1014. Because Petitioners claim that the District has not adopted the proper evaluation procedures for teachers and administrators, and seek to force immediate change in such procedures, PERB concludes that "this matter falls squarely within PERB's original jurisdiction under the 'arguably prohibited' prong of the Modesto test." PERB Opp. at 8.

PERB acknowledges that Petitioners have no standing to appear in a PERB proceeding, and therefore this case does not present an identical controversy under El Rancho. PERB contends that this case falls within an exception to the identical controversy requirement. The United States Supreme Court stated in Sears Roebuck & Co. v Carpenter, (1978) 436 U.S. 180, that the lack of identical controversies would not foreclose preemption under the National Labor Relations Act if court resolution of the dispute would create a risk of misinterpretation of federal law.<sup>13</sup> See El Rancho, *supra*, 33 Cal.3d at 959 (relying on Sears to conclude that where employer has no method of invoking PERB jurisdiction there is no preemption of court action unless there is a significant risk of misinterpretation of labor statute).

PERB concludes that since the Teachers and Administrators Unions filed unfair labor practice claims concerning the very issue in this case, there is a risk of conflicting decisions or misinterpretation of the EERA. PERB Opp. at 10. Moreover, a decision granting Petitioners'

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<sup>13</sup>Federal interpretation of the National Labor Relations Act is considered by California courts to be persuasive authority in interpreting California labor statutes. Regents of the University of California v. Public Employment Relations Board, (1986) 41 Cal.3d 601, 648.

claims would deprive UTLA of its opportunity for PERB to determine in the first instance the District's obligation to bargain over the Pilot Program. PERB Opp. at 11. As the courts have recognized, PERB has the expertise and is in the best position to perform the delicate balancing of competing interests and the harmonization of statutes involved in the collective bargaining process. PERB Opp. at 12.<sup>14</sup>

Separate from its preemption argument, PERB argues that the court cannot grant the relief requested by Petitioners -- mandamus to compel the District to immediately change the system for evaluating the performance of teachers and administrators based on the performance of students on standardized tests -- because it would interfere with the right to collectively bargain. PERB Opp. at 1, 15. PERB notes that section 44661.5, enacted at the same time as the 1999 amendment to the Stull Act, expressly contemplates that where certificated employees are represented by a union, the school district employer will implement changes to employee evaluation procedures only by mutual agreement with the union. PERB Opp. at 13-14. Under a predecessor to EERA, the appellate court in Certificated Employees Council v. Monterey Peninsula Unified School District, (1974) 42 Cal.App.3d 328, 333, 337, held that the procedures under the Stull Act are subject to the meet and confer requirements of collective bargaining because "[i]t is difficult to imagine a matter more directly related to *employer-employee relations* and working conditions than the evaluation made pursuant to the guidelines that becomes [part of an employee's personnel file]...." PERB concludes that adoption of guidelines for evaluation of employees under the Stull Act may be effectuated only through collective bargaining. PERB Opp. at 15.

#### **4. Analysis**

PERB does not have exclusive initial jurisdiction over the issues in this case. Nor would mandamus interfere with the collective bargaining rights of the District and the unions.

The simplest reason why PERB does not have exclusive jurisdiction, or any jurisdiction, is that parties may not enter into a contract that violates a statutory law. Petitioners contend that the District does not comply with a mandatory legal duty under the Stull Act to evaluate teachers and administrators based in part on student performance. They further argue that the District and the unions have agreed for decades "to enter into unlawful collective bargaining contracts...that prevented compliance with the statutory mandate of evaluating certificated staff based in part on available evidence of whether or not the children are learning." Op. Br. at 11. If this allegation is true, the District has failed for years, and through any number of collective bargaining agreements between the District and the unions, to comply with the law. Whatever the collective bargaining rights of the District and unions, and whatever PERB's jurisdiction, the parties and PERB cannot avoid the District's mandatory legal duty by arguing that it has a duty to collectively bargain, or that PERB has exclusive jurisdiction to address unfair labor practices. The District is without power to negotiate or waive the mandatory provisions of the Education

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<sup>14</sup>The unions make similar preemption arguments. UTLA Opp. at 3-5; AALA Opp. at 2. In addition, AALA argues that court interference with the collective bargaining process would violate the separation of powers doctrine. AALA Opp. at 12. The court views this as simply a restatement of the jurisdiction issue.

Code, and any provision in a collective bargaining agreement violating a statute in the Education Code is void. California Teachers' Assn. v. Livingston Union School District, (1990) 219 Cal.App.3d 1503, 1518.<sup>15</sup>

The jurisdictional argument raised by PERB and the unions confuses *whether* the District is violating a mandatory duty under the Stull Act with *how* the District meets that duty. It is beyond cavil that a mandamus claim will lie to compel a public agency to comply with the law. If the court determines that LAUSD is not complying with the Stull Act, the court will grant mandamus relief directing that it do so. The specific *means* by which LAUSD complies may well be a matter subject to collective bargaining. Thus, some or all of the following may be subjects for which the District must collectively bargain: (1) whether the District adopts the AGT System, uses student grades or pass/fail rates, or uses some other means of measuring student performance; (2) how student performance criteria are incorporated into teacher and administrator evaluations – *e.g.*, as an express provision on a Stull final evaluation form or some other manner; (3) the importance of student progress in relation to the other factors for teachers and administrators are evaluated; and (4) the training requirements for principals and assistant principals in how to use student progress in teacher evaluations.<sup>16</sup> None of these collective bargaining issues prevents the court from issuing mandamus to compel the District to comply with the Stull Act by using student progress to evaluate teacher and administrator performance, and to exercise its discretion in deciding how to do so without committing an unfair labor practice. *See Doe v. Albany Unified School District*, (2010) 190 Cal.App.4th 668, 675.

Petitioners may be overreaching for some of the relief they are requesting, but this does not mean they are not entitled to any relief at all. The court cannot tell the District how to implement changes to its evaluation process, but this would be true even if the unions had no labor interest in, and PERB had no jurisdiction over, collective bargaining issues. Mandamus will not lie to force a public entity or official to exercise its discretionary powers in any particular manner, only to compel the agency to act in some manner. Sego v. Santa Monica Rent Control Board, (1997) 57 Cal.App.4th 250, 255.

The test for preemption is (1) whether public policy is best served if PERB retains exclusive initial jurisdiction because the action is arguably prohibited or protected by EERA, and (2) the present controversy is identical to that which could have been presented to PERB, unless it presents a significant risk of misinterpretation of a labor statute. Neither issue favors preemption.

With respect to first issue, Petitioners are arguing that the District is violating the Stull Act. As Petitioners contend (Reply at 10), PERB only has authority to adjudicate allegations of unfair labor practices. Govt. Code §3541.3(b)(i). “PERB does not have exclusive initial jurisdiction where a pure Education Code violation (as opposed to an arguably unfair practice) is alleged.” Dixon v. Board of Trustees, (1989) 216 Cal.App.3d 1269, 1277. The action is simply not arguably prohibited or protected by EERA.

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<sup>15</sup>EERA expressly provides that it does not supersede the Education Code. Govt. Code §3540.

<sup>16</sup>The court offers no opinion on which issues must be collectively bargained.

With respect to the second issue, PERB concedes that Petitioners have no standing to file an unfair labor practice charge with PERB, and no direct way to invoke its jurisdiction. Therefore, the controversy is not identical to the Teachers Union's claim before PERB concerning the Pilot Program. Nor is there any significant risk that EERA will be misinterpreted by the court in determining Petitioners' claim. Indeed, the EERA is not relevant to the merits of this case.<sup>17</sup>

If Petitioners prevail on their claim, the court will essentially tell LAUSD, "You're not complying with the Stull Act. Go do whatever you need to do to bring your evaluation process for teachers and administrators in compliance with the Act." It will then be up to LAUSD to decide how to do this without committing an unfair labor practice.

#### **F. Other Procedural Issues**

The Administrators Union contends that Petitioners lack standing to make their mandamus claim, and that they have failed to name the District's Board as an indispensable party.

##### **1. Standing**

Petitioners reside within the District. They consist of the parents acting as guardians *ad litem* of minors who attend District schools.<sup>18</sup> The parents also are taxpayers, as is individual Petitioner Alice Callaghan.

Standing for mandamus requires that the petitioner have a "beneficial interest." In general, The petitioner must have "some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." Carsten v. Psychology Examining Commission, (1980) 27 Cal.3d 793, 796. Where a public right is involved, the petitioner is not required to have any legal or special interest; it is sufficient that as a citizen he or she is interested in having the public duty enforced. Burrtec Waste Industries, Inc. v. City of Colton, (2002) 97 Cal.App.4th 1133, 1137.

There is no doubt that Petitioners as parents of students and as taxpayers may enforce a legal duty of the District under the Stull Act. See Doe v. Albany Unified School District, (2010) 190 Cal.App.4th 668, 685 (parent of plaintiff had standing to compel compliance with Education Code requirement of physical education). The Administrators Union makes no argument and cites no case law to the contrary, merely alleging that Petitioners have no standing to interfere in the collective bargaining process before PERB. AALA Opp. at 11.

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<sup>17</sup>PERB's argument that section 44661.5 prevents the District from unilaterally changing employee evaluation procedures fails for the same reason that the District can comply with a duty under the Stull Act and do so through collective bargaining. The court need not decide whether Petitioners are also correct that section 44661.5 is permissive, not mandatory, in its reference to collective bargaining. See Reply at 13.

<sup>18</sup>The Petition lists the parents and children as Does. While the court is dubious that there is any need for this procedure, no party has objected to the fact that they are not specifically identified.

Petitioners have standing.

## **2. Indispensable Party**

The Administrators Union argues that the District's Board is not named as a Respondent, is the entity that employs all of the District's certificated employees, and is therefore indispensable. AALA Opp. at 13.

CCP section 389(a) defines the persons who ought to be joined if possible, known as "necessary parties." A determination that a party is necessary is a predicate for the determination whether the party is also indispensable. County of Imperial v. Superior Court, ("Imperial") (2007) 152 Cal.App.4th 13, 26. Once a missing party is found to be necessary, the court must assess whether it is indispensable pursuant to CCP section 389(b).<sup>19</sup> Failure to join an indispensable party is not a jurisdictional defect in the fundamental sense of jurisdiction. The court has the power to render a decision as to the parties before it in the absence of an indispensable party. It is for reasons of equity and convenience only that a court will not proceed with a case where it determines that an indispensable party is absent and cannot be joined. Save Our Bay, Inc. v. San Diego Unified Port District, ("Save Our Bay") (1996) 42 Cal.App.4th 686, 693.

The controlling test for whether a necessary party is also indispensable under CCP section 389(b) is whether "the plaintiff seeks some type of affirmative relief which, if granted, would injure or affect the interest of a third person not joined. Save Our Bay, *supra*, 42 Cal.App.4th at 692. In other words, a third party is indispensable if his or her rights must necessarily be affected by the judgment. *Id.* Each of the four factors in CCP section 389(b) must be considered, but "no factor is determinative or necessarily more persuasive than another." Imperial, *supra*, 152 Cal.App. 4th at 35.

Petitioners fail to address the AALA's argument. Nonetheless, the argument fails. Petitioners have named the District, its Superintendent, and all members of the District's Board. They have not named the Board as an entity. The Administrators Union provide no analysis showing that the Board is a separate entity apart from its members. Nor does it analyze any of the factors for an indispensable party under CCP section 389(b). Assuming *arguendo* that the Board is a necessary party, it also is clear that it is not indispensable because the District and individual Board members can adequately defend the entity Board's interests. *See Imperial*, *supra*, 152 Cal.App.4th at 38 ("The test for determining the ability to protect an absent party's

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<sup>19</sup> CCP section 389(b) provides: "If a person as described in paragraph (1) or (2) of subdivision (a) cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed without prejudice, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; (4) whether the plaintiff or cross-complainant will have an adequate remedy if the action is dismissed for nonjoinder."

interest is whether existing and absent parties' interests are sufficiently aligned that the absent party's right necessarily will not be affected or impaired by the judgment or proceeding."); see also Deltakeper v. Oakdale Irrigation District, (2001) 4 Cal.App.4th 1092, 1103.

The Board is not an indispensable party.

### **G. Public Policy<sup>20</sup>**

The state of public education generally, and within LAUSD in particular, is troubling. Only 56 percent of the District's students graduate from high school, test scores are low, and less than a third of students take the courses necessary for admission to the University of California. Thus, even if they had adequate grades and test scores, the vast majority of the District's students would not be eligible for admission to the State's premier college system.

A number of factors outside school affect a student's success, including parental involvement, family and community culture of education, transportation and other logistical issues, and financial ability to focus on school. But effective teachers are an important factor as well. Teachers differ in their motivation, experience, talents, skills, and effectiveness. Some teachers foster remarkable academic growth in their students, and others do not. Students inspired by effective teachers are more likely to go to college and live successful lives. For this reason, there is much to be gained from identifying those teachers whose performance lags, both for themselves and for their students.

School principals, too, can have a far-reaching effect on a student body and its success as a whole. According to the *amicus* brief, one study found that school principals account for 25 percent of a school's impact on student achievement.

The District's teacher evaluation process has been the subject of criticism. In 2009-10, 99.3 percent of LAUSD's teachers receive the highest rating of "meets standard performance." Moreover, 79 percent received a "meets" for all 27 indicators of performance, meaning that they did not need improvement in any area. This one dimensional rating of virtually all teachers as "effective" provides little meaningful evaluation. It is aggravated by the fact that the Stull Act does not require the District to evaluate all teachers every year. Teachers themselves have been frustrated by the lack of feedback from their principals.

Although in 2009-10 the vast majority of the District's teachers were rated as effective and not needing any improvement, that same year only 46 percent of District students scored as proficient in English language arts and only 56 percent scored as proficient in mathematics. LAUSD continues to have one of the lowest high school graduation rates in the State, and an even lower percentage of students are college ready. These failures cannot be laid solely at the feet of the District's teachers. Students must want to learn in order to do so, and some students can never be motivated to learn. But the District has an obligation to look at any and all means available to help improve the dismal results of its student population.

One means of improving student education is to evaluate teachers and administrators based on the overall progress of their students. Twenty four states have adopted policies to consider classroom effectiveness as measured by student progress as part of how teaching

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<sup>20</sup>Much of this section is based on the *amicus* brief of Mayor Villaraigosa. It is not supported by evidence, and is essentially a public policy argument.

performance is assessed. When classroom observations and student data are used together in a multi-measure teacher evaluation system, comparisons between the two components can be made to check for accuracy and provide more detailed information on a teacher's practice.

#### **H. Merits**

Whatever the public policy merit of using pupil progress in evaluating teachers and administrators, the District cannot be compelled to do so unless the law requires it. The issue becomes whether the Stull Act requires student progress to be a basis for teacher and administrator evaluation and, if so, whether the District is following the law.

#### **1. The Standards**

The State is required to develop assessment tests, known as the CSTs, that measure pupil achievement against content standards adopted by the Board of Education. §60642.5. The parties agree that the Board of Education has created CSTs that measure pupil achievement. Pet. RJN, Exs.C, E. The CSTs are part of the Board of Education's STAR program. The CSTs are "critterion-referenced assessments," meaning that they measure what students have learned in relation to the State's academic standards, as opposed to "norm-referenced assessments," which measure one student's knowledge compared to that of other students.

Section 44662(a) requires the District also to establish standards of expected pupil progress at each grade level in each area of study. The parties agree that the District has established standards of pupil progress. Pet. RJN Exs. C, E.

#### **2. The Certificated Personnel Who Must Be Evaluated**

##### **a. Teachers**

The District is required to evaluate the performance of teachers as that performance reasonably relates to (a) the progress of pupils toward the District's standards and (b) the CSTs, if applicable. See §4462(b)(1).

Pursuant to section 44662(b)(1), the District is not required to use student test scores in measuring pupil progress toward District standards for purposes of teacher evaluations. The District has various ways to measure pupil progress. It may use periodic assessment scores, individual letter grades, grade point average, pass-fail rates, college prep requirements, high school graduation, ACT & SAT scores, and AP class enrollment to help measure pupil progress toward District standards. However measured, the Stull Act requires the District to evaluate teacher performance as it reasonably relates to measured pupil progress.

##### **b. Administrators**

The Stull Act divides administrators are divided into two categories: (1) those who can be evaluated based on pupil progress toward District and State standards, and (2) those who cannot. The performance of administrators must be evaluated as it reasonably relates to District standards and CST results, if possible. See §44662(b)(1).

As a practical matter, principals and assistant principals are the obvious administrators who can be measured by the progress of children in their schools. Other administrators who work in the schools (including school nurses, psychologists, counselors, teacher advisors, and

certain others) have no direct relationship with student teaching. Under the Stull Act, the District must establish the job responsibilities for such administrative employees. §44662(c). If the District determines that these job responsibilities cannot be evaluated under the provisions of section 44662(b) -- which includes pupil progress, instructional techniques and strategies, adherence to curricular objectives, and a suitable learning environment -- the District must evaluate the performance of these employees "as it reasonably relates to the performance of those responsibilities." §44662(c).<sup>21</sup>

The District disagrees, lumping together all administrators as noninstructional certificated personnel "whose responsibilities cannot be evaluated appropriately" under section 44662(b). Dist. Opp. at 6-7.

While nurses, counselors, and psychologists, and other persons not responsible for student education, certainly fit under section 44662(c), the District does not explain in any detail why principals and assistant principals cannot be evaluated under section 44662(b). It is possible -- although the court has no evidence on the issue -- that principals and assistant principals can not be evaluated on their "instructional techniques and strategies" (§44662(b)(2)), or their adherence to curricular objectives (§44662(b)(3)). But they seemingly can be evaluated on whether they have established and maintained "a suitable learning environment" at their school. §44662(b)(4). Most important for present purposes, principals and assistant principals also can be evaluated based on pupil progress at their school. See §44662(b)(1). Indeed, the District is negotiating with the Administrators Union to use AGT for this very purpose, and school principals and assistant principals are participating in the Pilot Program which evaluates them based on pupil progress on a no stakes basis.

Section 44662(c) permits the District to evaluate administrators as it reasonably relates to the performance of their defined responsibilities only if their responsibilities "cannot be evaluated appropriately" under section 44662(b). It is clear that some portions of section 44662(b) can be used to evaluate principals and assistant principals. Of course, an evaluation of principals and assistant principals based on student performance and establishment of a suitable learning environment are not the only factors on which the District may choose to evaluate these administrators. But section 44662(b) does not limit the District to the four specified items. Rather, the statute lists four items which must be considered in evaluating teachers and pertinent administrative personnel, leaving for the District to determine what other factors are germane.

Under section 44662, the performance of teachers and school principals and assistant principals (hereinafter, collectively "principals") must be evaluated as their performance reasonably relates to pupil progress toward the District's standards and by the CSTs, if applicable.<sup>22</sup>

First  
consider

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<sup>21</sup>Still other administrators work outside schools in the Local Districts. Depending on whether they have responsibility for the education in a school or schools, such personnel may or may not be subject to evaluation based on pupil progress toward District and State standards. The court has insufficient evidence to make this determination.

<sup>22</sup>Whether other certificated, noninstructional personnel working in the Local Districts also must be evaluated based on pupil progress is a matter for determination by the District in the



### 3. The Applicability of the CSTs

The next issue is whether the CSTs are “applicable.” Section 44662(b)(1) only requires that State standards as measured by the CSTs or other State tests be used for teacher and principal evaluations if they are applicable. The District and unions argue that the CSTs are not applicable for the practical reason that they are administered in May of each year, and the scores are not available until August. Meanwhile, the Stull Act requires the District to evaluate teachers and administrators by the last day of the school year. §44663. Thus, the opposing parties contend that the CST results are not available for teacher and principal Stull evaluation. Dist. Opp. at 6.

The opposing parties seem to be arguing that last year’s CST results are not applicable to the evaluation of a teacher or principal in the current year. There is nothing in the statute or logic to sustain this conclusion. Historical performance is a perfectly acceptable data for evaluation of current performance. Of course, the closer the data is to the time of evaluation, the more valuable it is. Teacher performance, and student progress, can and does change as the teacher evolves his or her instructional technique and other aspects of the profession. But that does not make last year’s CST results inapplicable.

Section 44662(b)(1)’s limitation on the use of State standards “if applicable” is a reference to the facts that CSTs do not exist for every grade and every subject, and that some students (non-English speakers) do not take the CSTs. That is, section 44662(b)(1) requires that teachers and principals be evaluated based on pupil progress toward District standards and any applicable State standards as measured by pertinent State tests. Whether a State standard “applies” must be determined on whether it exists for a particular grade and subject, and English-speaking student. The District cannot determine that the State standards, and hence the CSTs, are inapplicable to teacher and principal evaluations on a wholesale basis simply because it is inconvenient to use them. A conclusion to the contrary would negate section 44662(b)(1)’s mandate that the CSTs be used, giving a school district complete discretion to ignore them. That is not consistent with the statute’s plain meaning or its condition that the CSTs must be “applicable” in order to be used to measure teacher and principal performance.

The District acknowledged that the CSTs can be used in Stull evaluations by developing its AGT system, which measures teacher and principal performance as it relates to student progress on the CSTs over time. See Dist. Opp. at 6. This is an admission both that the CST’s historical results are relevant to teacher and principal evaluations, and that they can be incorporated in those evaluations, albeit as part of a project of great complexity. See *ibid.* 44662(b).

The performance of the District’s teachers and principals must be evaluated as their performance reasonably relates to pupil progress toward the District’s standards<sup>23</sup> and toward the State standards measured by the CSTs.

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first instance.

<sup>23</sup>The District is correct that section 44662(b)(1) does not require it to measure student progress toward District standards by student test scores. Dist. Opp. at 3. Only State standards must be measured by test scores: the CSTs.

second instance

#### **4. The Meaning of “Reasonably Related”**

The next issue is to interpret the phrase “reasonably relates” in section 44662(b). The statute only requires the District to evaluate teachers and principals as their performance reasonably relates to the progress of pupils. What does the term “reasonably relate” mean in the statute?<sup>24</sup>

Parsing the phrase, the term “reasonable” is a common word of legal parlance. Among other definitions, it means “fit and appropriate to the end in view.” Black’s Law Dictionary, (4<sup>th</sup> ed. 1968) 1431. The term “relate” means “to stand in some relation” or “to have bearing or concern.” Id. at 1452. Thus, a reasonable relationship is one that is appropriate for the matter in concern.

The court’s research disclosed little in the way of California cases discussing the phrase “reasonably relate” in a statute. The most pertinent is Balch Enterprises, Inc. v. New Haven Unified School District, (1990) 219 Cal.App.3d 783, which concerned Govt. Code section 65995(b)(2), which at the time provided that a school district could not levy a fee on a commercial development for school construction unless the school board found that the amount of the fees (1) bears a “reasonable relationship” to the needs of the community for school facilities and (2) is “reasonably related” to the need for schools caused by the commercial development itself. The Balch court quoted from the progeny of Associated Home Builders etc., Inc. v. City of Walnut, 4Cal.3d 633, a case concerning the constitutional standard for whether an exaction for property development is a Fifth Amendment taking of property, and indicating that whether an exaction is “reasonably related” to the need created by the development only requires an indirect relationship between the two. Id. at 794-95 (citation omitted). The Balch court did not adopt this indirect relationship test for purposes of statutory interpretation, finding that the record contained no more than a recitation of statutory language and no citation of evidence supporting a conclusion that the development was reasonably related to a need for schools caused by the development itself. Ibid.

Obviously, nothing in Balch controls the interpretation of “reasonably relates” in section 44662(b). Nonetheless, it is worth mentioning that the California Supreme Court in Associated Home Builders permitted an indirect relationship for purposes of what is “reasonably related.” The common meaning of a reasonable relationship -- one that is appropriate for the matter in concern -- suggests that whether an indirect relationship is permitted depends on the overall circumstances of a particular case.

In the context of teacher and principal evaluations, nothing in section 44662(b) requires a direct relationship in order to be reasonable. The phrase “reasonably relates” means that the performance of teachers and principals must be evaluated by pupil progress toward the District’s standards (as measured by the District’s testing), and toward the State standards as measured by the CSTs, but that the District has discretion in whether pupil progress must be direct or indirect in this evaluation. The District may make pupil progress a direct factor in the final teacher and principal evaluations, or it may consider pupil progress indirectly in such evaluations,

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<sup>24</sup>While both Petitioners and the Teachers Union ask the court to judicially notice portions of the Stull Act’s legislative history, no party argues that the phrase “reasonably relates” lacks a plain meaning requiring the court to look to the legislative history for interpretation of the statute.

incorporating it through other measurements and means. But there must be a nexus between pupil progress and the evaluations.

This interpretation is consistent with the Stull Act's purposes, one of which is to require that school districts evaluate teacher and principal performance based in part on the progress of pupils. The Stull Act does not say how pupil progress should be factored into the evaluation, leaving it to the school district's discretion. It is perfectly appropriate for a school district to incorporate pupil progress into the evaluation indirectly, through other factors in assessing the teacher or principal.

##### **5. The District Does Not Comply with the Stull Act**

Despite the discretion given to the District in using pupil progress in teacher and principal evaluations, the District does not currently comply with the Stull Act. The District is not required to directly consider pupil progress in these evaluations, but there must be a nexus between pupil progress and the evaluations. No such nexus currently exists.

The District argues that it does indirectly evaluate at least teachers as shown on the final evaluation form. Dist. Opp. at 3-4.

By their express terms, the factors in the final evaluation form that are relied on by the District evaluate a teacher on his or her instructional techniques and strategies, a completely separate Stull Act factor from pupil progress. See §44662(b)(2). Thus, a teacher is evaluated on how he or she (1) uses the result of multiple assessments to **guide instruction**; (2) **guides** all students to be self-directed and assess their own learning; (3) **engages students** in problem solving, critical thinking and other activities that make subject matter meaningful; (4) uses a variety of **instructional strategies** and resources to respond to student's diverse needs; (5) demonstrates evidence of short-term and long-term **plans to foster student learning** and achievement of the State standards; (6) uses State subject matter content standards to **establish rigorous learning goals** for students; (7) **interrelates ideas and information** within and across subject matter areas; (8) uses **instructional strategies**, materials, resources, and technologies that are appropriate to the subject matter; (9) **demonstrates knowledge** of State Standards and student development; (10) **uses a grading/evaluation system** that is aligned with State Standards; and (11) **plans and implements classroom procedures** and routines that support student learning. As the bolded language shows, these final evaluation factors concern what the teacher does, plans, or uses as part of the teaching process. Nothing in these factors concerns student progress.

The District essentially contends that if a teacher performs these instructional tasks well, then his or her students should improve on both District periodic assessments and their CSTs. Dist. Opp. at 4.

It is true, as the District argues, that it is not required to check a box on a teacher evaluation form at year-end that assesses pupil progress, and that it has flexibility in performing this evaluation. *Ibid.* But there must be a nexus between pupil progress and teacher evaluations. This nexus has several essential components. First, the evaluator must know what the pupil progress is with respect to that teacher. A teacher cannot be evaluated on pupil progress if the evaluator lacks information. Second, the evaluator must know how to use the pupil progress information. That is, the evaluator must be trained or otherwise know how significant the

information is concerning pupil progress to the overall evaluation of the teacher. Third, since the evaluation must be in writing (§44663), the evaluator's determination of the impact of pupil progress must be reflected somewhere in writing. This does not mean that there must be a box on a form which directly addresses pupil progress. It does mean that pupil progress must be reflected in some factor on a written teacher evaluation.

The District also argues that it does consider pupil progress in evaluating teachers over the school year. The periodic testing and grading of students provides data which is used to guide and advise teachers on their instruction of students. Once a trend develops, the tests are used to assist teachers in developing goals to improve student scores, including improved instruction. Whether a teacher meets these teaching goals is evaluated in the year-end form. This is an indirect evaluation of the teacher based on student progress. Dist. Opp. at 5.

This argument is simply a restatement of the tautology that as teachers teach, students will learn. The point of section 44662(b)(1) is to incorporate pupil progress in the teacher's evaluation. The required nexus between teacher evaluations and student progress toward District standards is not traceable where a teacher is evaluated based on his or her instructional technique, as separately required by section 44662(b)(2).

Superintendent Deasy agrees that the District's current evaluation system does not comply with the Stull Act. Thus, he testified that there is no uniform process to include any student achievement in teacher evaluations. Deasy Depo. at 25. Student progress is not contained in the Initial Planning Sheet. *Id.* at 99-100. The teacher final evaluation form also does not contain formation about pupil progress in the teacher's classroom. *Id.* at 104. While there is some expectation that a teacher will make pedagogical changes to instruction, the District does not currently evaluate teachers by how students do academically. *Id.* at 67. Student academic outcomes are used to adjust instruction (*ibid.*), but not for teachers' year-end performance evaluation. *Id.* at 67, 69. In short, the District does "not currently construct evaluations of teachers by using how students do over time in terms of their academic outcomes." *Id.* at 66-67. Similarly, student achievement is not used in the evaluations for administrators. *Id.* at 25-26.

The District does not address Superintendent Deasy's admissions that the evaluation system for teachers and principals does not use student progress toward District or State standards. He is, after all, the employing authority responsible for teacher and administrator evaluations. §§ 44664(b), 44665. His admissions underscore the above conclusion that the District is not currently complying with the Stull Act.

In sum, the District does not currently comply with the Stull Act's requirement that teachers and principals be evaluated by the progress of students toward District standards, however measured, and by the progress of students toward State standards as measured by the CSTs.<sup>25</sup>

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<sup>25</sup>Petitioners and the District agree that implementation of the AGT system for teachers and principals would comply with the Stull Act. Pet. Op. Br. at 9; Dist. Opp. at 5. Whether the District imposes the AGT system in order to comply is a matter within its discretion and subject to the collective bargaining issues raised by UTLA and AALA.

## **6. The District's Duty is Enforceable by Mandamus**

Both the District and UTLA argue that, if the District is not complying with the Stull Act, mandamus is not available as a remedy.

The Teachers Union points out that nothing in section 44662 requires the use of a specific methodology such as the AGT system to comply with the Stull Act's mandate that a teacher's performance be evaluated as it reasonably relates to District and State standards. UTLA Opp. at 7. The UTLA relies on Doe v. Albany Unified School District, (2010) 190 Cal.App.4th 668, 678, for the proposition that there must be a clear ministerial duty in order to grant a mandamus petition. As section 44662 does not prescribe a method as to how the District must include student progress in teacher evaluations, there is no clear procedure for performance evaluations and mandamus will not lie. UTLA Opp. at 9-10.

The District similarly argues that mandamus is appropriate only to compel a clear, present and ministerial duty. Dist. Opp. at 10-11. It points to Petitioners' proposed order, seeking a court writ compelling the District to implement a system of evaluating applicable certificated employees as their performance reasonably relates to student progress toward District and State standards, compelling it to confer with employees who receive an unsatisfactory performance evaluation, reducing the evaluations to writing and transmitting them to the employee, revoking consent to evaluate employees who have been employed at least ten years less frequently than every other year, and rescind any five year cycle of review for senior staff until a Stull Act evaluation has been conducted. Ibid. The District argues that the proposed writ interferes with the vast discretion committed to the District, and would be impossible to enforce. Ibid.

To the extent UTLA and the District contend that mandamus does not lie to compel the District to comply with the Stull Act, they are wrong. An agency can always be compelled to comply with the law. The failure to do so is arbitrary and capricious action under CCP section 1085. To the extent that UTLA and the District contend that the District has discretion as to how to comply with the Stull Act's requirements that it evaluate teachers (and administrators), the court has repeatedly stated ( *see post*) that it does have that discretion. But discretion in how to comply with the law does not prevent mandamus from issuing to compel the District to do so. See Sego v. Santa Monica Rent Control Board, (1997) 57 Cal.App.4th 250, 255.<sup>26</sup>

## **I. Conclusion**

The Legislature passed the Stull Act and its 1999 amendment in an effort to improve the dismal progress of students in California's public schools. The law is premised on the public policy belief that student achievement will improve if student progress is made a component of teacher and administrator performance evaluations. The District does not currently comply with the Stull Act's requirement that teachers and principals be evaluated by the progress of students toward District standards, however measured, and by the progress of students toward State standards as measured by the CSTs. The District must do so, and a writ will issue compelling this task.

The performance of the District's teachers and principals must be evaluated as their

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<sup>26</sup>The court agrees with the District that it cannot be compelled to evaluate teachers and administrators more frequently than required by section 44664.

performance reasonably relates to pupil progress toward the District's standards, however measured, and toward State standards as measured by the CSTs. The District has a great deal of discretion in how it complies with the pupil progress requirement, and this discretion must be exercised without committing an unfair labor practice in violation. The discretionary issues which the District must decide include (1) whether the District adopts the AGT System, uses student grades or pass/fail rates, or uses some other means of measuring student performance, (2) how student performance criteria are incorporated into teacher and administrator evaluations – *e.g.*, directly as an express provision on a Stull final evaluation form or indirectly in some other manner, (3) the importance of student progress in relation to the other factors on which teachers and administrators are evaluated, and (4) the training requirements for principals and assistant principals in how to use student progress in teacher evaluations. Some or all of these issues may be required to be the subject of collective bargaining with the Teachers and Administrator Unions.

Additionally, while principals and assistant principals are clearly within the scope of section 44662(b)(2), the District must determine in the first instance whether administrators located outside of schools and in the Local Districts also are within its scope, or instead fall within section 44662(c) as certificated noninstructional personnel whose responsibilities cannot be evaluated appropriately under section 44662(b).

Petitioners' counsel is ordered to prepare a proposed judgment and writ of mandate consistent with this decision, serve them on counsel for all opposing parties for approval as to form, wait 10 days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment and writ along with a declaration stating the existence/non-existence of any unresolved objections. The court expects the parties to agree as to the form of the judgment.<sup>27</sup> An OSC re: judgment is set for July 18, 2012, at 1:30 p.m.

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<sup>27</sup>Petitioners seek attorneys' fees under CCP section 1021.5. Pet. Op. Br. at 15. No opposing party addresses this issue, which is better left to a separate motion for attorneys' fees. See CRC 3.1702(b). Before such a motion is filed, the parties are ordered to meet and confer on whether Petitioners are entitled to attorneys' fees and the reasonableness of the amount sought in an attempt to resolve the issue.