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Los Angeles Superior Court

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John A. Clarke, Executive Officer/Clerk

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES
10

11 JANE DOE 1, individually, and as the
guardian ad litem of ABELITO DOE, a
12 minor; JANE DOE 2, individually, and as the
guardian ad litem of BRENDITA DOE, a
13 minor; JANE DOE 3, individually, and as the
guardian ad litem of ANGELITA DOE and
14 BOBBY DOE, minors; and JANE DOE 4,
individually, and as the guardian ad litem of
15 CARMELITA DOE, a minor; JANE DOE 5,
individually, and as the guardian ad litem of
16 GRACIE DOE, a minor; JOHN DOE 1,
individually, and as the guardian ad litem of
17 ERIKA DOE and FRANNY DOE, minors;
and ALICE CALLAGHAN, an individual,

18 Petitioners and Plaintiffs,

19 v.
20

21 JOHN DEASY, Superintendent, Los Angeles
Unified School District; MONICA GARCIA,
President, Board of Education, Los Angeles
22 Unified School District; TAMAR
GALATZAN, BENNETT KAYSER,
23 MARGUERITE LAMOTTE, NURY
MARTINEZ, RICHARD VLADOVIC,
24 STEVE ZIMMER, Members, Board of
Education, Los Angeles Unified School
25 District; LOS ANGELES UNIFIED
SCHOOL DISTRICT; and DOES 1 through
26 10, inclusive,

27 Respondents and Defendants,
28

Case No. BS134604

[The Honorable James C. Chalfant]

MOTION FOR WRIT OF MANDATE

Date: June 1, 2012
Time: 9:30 a.m.
Location: 111 North Hill Street
Los Angeles, CA 90012

[Request for Judicial Notice, Declaration of
Scott Witlin, and Declaration of William
Lucia filed concurrently]

[Proposed Order lodged herewith]

Date Action Filed: November 1, 2011

1 **BARNES & THORNBURG LLP**
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15 CARMELITA DOE, a minor; JANE DOE 5,
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1 UNITED TEACHERS LOS ANGELES; and
2 ASSOCIATED ADMINISTRATORS OF
3 LOS ANGELES;

4 Real Parties in Interest.
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1 Section 44664 until a complete Stull Act evaluation has been conducted as described
2 above;

3 Furthermore, Petitioners seek a declaration that

4 (2) The current and proposed collective bargaining agreements, and associated memoranda
5 of understanding between the LAUSD and the AALA and the LAUSD and the UTLA,
6 respectively, violate the Stull Act in that each agreement currently does not allow or
7 require lawful complete certificated employee evaluations, and further that these
8 agreements prevent the assurance of the LAUSD's full compliance in the future to
9 ensure proper performance evaluations are conducted for certificated personnel, and
10 mandated assistance is provided to struggling employees, as applicable;

11 (3) The current and proposed collective bargaining agreements and associated memoranda
12 of understanding between the LAUSD and the AALA and the LAUSD and the UTLA,
13 respectively, are null and void in their entirety or to the extent that they do not comply
14 with the Stull Act;

15 This Motion is based on this Notice of Motion and Motion, the attached Memorandum of
16 Points and Authorities, the Declaration of Scott Witlin, the Declaration of Bill Lucia, and request for
17 judicial notice filed and served concurrently herewith, any matter of which the Court may take judicial
18 notice, all pleadings and papers in the Court's file, and upon such argument as may be made at the
19 hearing of this motion.

20
21 Dated: April 4, 2012

BARNES & THORNBURG LLP
R.D. Kirwan
Scott J. Witlin
Levi W. Heath
Devin Stone

22
23
24
25 By _____



Scott Witlin
Attorneys for Petitioners and Plaintiffs

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 *“We do not currently construct evaluations of teachers by using how students do over time in*
4 *terms of their academic outcomes.”*

5 That was the response of District Superintendent Dr. John Deasy at deposition when asked if
6 the Los Angeles Unified School District (“District” or “LAUSD”) evaluates teachers and
7 administrators based upon how well their students are learning. Reasonably including student learning
8 in the evaluation of “certificated employees”¹ is required by Education Code Section 44662(b)(1)
9 which provides:

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

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

15 By failing to assess teachers and administrators based on the progress of pupils and including
16 that assessment as part of the annual evaluation, the LAUSD annually fails in its statutory obligations
17 to the hundreds of thousands of children, their parents and guardians, taxpayers and the community it
18 is responsible to serve. While the statute also requires evaluations based upon other factors as well, the
19 progress of pupils is a critical factor in the evaluation and personnel development regime underlying a
20 portion of the Education Code known as the Stull Act. Cal. Educ. Code § 44660 *et seq.* As developed
21 over more than four decades, the Stull Act specifies the minimum measures that must be used in the
22 performance evaluation of teachers and administrators, including the educational progress of their
23 students as reasonably measured toward locally adopted standards, and when applicable, the California
24 state standards as measured by state adopted criterion referenced assessments. For unsatisfactory
25 performers, the Stull Act requires the District to advise the employee in writing of the employee’s
26 deficiencies and endeavor to assist the employee in improving performance, which in turn will benefit

27 ¹ As used herein, the terms “certificated personnel” or “certificated employee” mean and shall refer to all personnel
28 assigned to positions within the District that require a certificate or credential required by statute to be eligible for
employment in an instructional or non-instructional role, as specified.

1 the students. Cal. Educ. Code §44664(b). The legislature intentionally prescribed a quality control
2 mechanism on adults evaluating other certificated adults' assessment of job performance to ensure
3 children's fundamental right to basic educational equality and opportunity to learn as guaranteed by the
4 California Constitution. Quite obviously, if a teacher or administrator is not effective in helping the
5 children to learn, little else in the school system matters.

6 The children and their parents brought this action to re-focus the District on its Constitutional
7 and statutory duties to ensure basic education equality and opportunity. The children and their parents
8 ask the Court to enforce a reasonable and established state law that requires the District to reasonably
9 evaluate and assess certificated employees' on-the-job performance, with among other mandated
10 minimum measures, indication of whether the students under an employee's charge are actually
11 learning, and provide help to struggling employees so they can effectively lead schools and educate
12 children.

13 Under the current performance evaluation system, the District does not mandate corrective
14 action with specific recommendations and assistance, transfer, suspend, or discipline ineffective
15 certificated personnel unless they are convicted of the commission of serious crimes leading to
16 mandatory credential suspension or revocation. The problem is not one of a lack of information on
17 pupil progress; the District acknowledges it has the data necessary to perform Stull Act-compliant
18 evaluations. The problem is a District that has relinquished its obligations to the students in order to
19 placate more powerful interests.

20 There can be no dispute that the nation's second largest school district is a broken school
21 system that has failed the hundreds of thousands of children in its charge. Therefore, Petitioners seek a
22 writ of judicial mandate to compel the LAUSD immediately to comply with the clear requirements of
23 the Stull Act and immediately include measures of pupil progress in the evaluations of its certificated
24 personnel and help the struggling staff so that they can better educate children.

25 II. PARTIES

26 A. Petitioners

27 Petitioners and plaintiffs are, and at all relevant times were, minors who reside in LAUSD
28

1 school attendance zones, and/or are currently attending school in the LAUSD, parents with minors
2 currently living in LAUSD school attendance zones, and/or taxpayers of Los Angeles County living
3 within the boundaries of the LAUSD. Petitioners and plaintiffs Abelito Doe, Angelita Doe, Brendita
4 Doe, Bobby Doe, Carmelita Doe, Erika Doe, Franny Doe and Gracie Doe are minors currently residing
5 within the boundaries of the LAUSD. As students residing within the boundaries of the LAUSD,
6 student-petitioners have a beneficial interest in the quality of their education, the enforcement of all
7 State education laws, and the assurance that certificated personnel are properly evaluated, rated,
8 retained and promoted, supported with additional training for unsatisfactory performance, transferred,
9 or face mandatory corrective action and other consequences as provided by the law for continued
10 unsatisfactory performance. Cal. Educ. Code §§ 44662(b), 44664(b), 44932 (a)(4). Petitioners and
11 plaintiffs Jane Doe 1, Jane Doe 2, Jane Doe 3, Jane Doe 4, Jane Doe 5 and John Doe 1, are taxpayers
12 within the District and guardians ad litem for the minor Student-petitioners. Petitioner and plaintiff
13 Alice Callaghan is a tax paying resident of Los Angeles County. As such, Ms. Callaghan has standing
14 to enforce the fundamental right to basic educational equality guaranteed under the California
15 constitution. *See, e.g., Green v. Obledo*, 29 Cal. 3d 126, 144 (1981). Collectively, all of the plaintiffs,
16 petitioners, and their respective guardians are referred to as “Petitioners.”

17 **B. Respondents**

18 Respondent and defendant LAUSD is a school district organized pursuant to law and
19 possessing those powers set forth in Articles IX and XVI of the California Constitution and the laws of
20 the State of California. *See e.g.* Cal. Const. art. 9 § 5; Cal. Educ. Code §§ 44660 *et. seq.* Respondent
21 and defendant Superintendent John Deasy (“Superintendent” or “Dr. Deasy”) is delegated authority by
22 the LAUSD pursuant to Cal. Educ. Code § 35026 and otherwise. Witlin Decl. ¶ 2, Exh. A. He is also
23 the “employing authority” pursuant to Section 44665 and responsible under Section 44664(b). *Id.*
24 Respondents Monica Garcia, Tamar Galatzan, Bennett Kayser, Marguerite LaMotte, Nury Martinez,
25 Richard Vladovic, and Steve Zimmer are members of the LAUSD Board of Education (collectively,
26 the “Board”) and, as such, are responsible for ensuring the LAUSD’s compliance with the Stull Act.
27 Cal. Educ. Code §§ 44662-44665.

1 The District's obligations arise from its status as a political subdivision of the State subject to
2 the California State Constitution (with its own obligation to operate a system of public schools that
3 provides children with an opportunity to learn and access the fundamental right of basic educational
4 equality) and from the requirements of the Stull Act. Cal. Const. Art. 9 § 5; Cal. Educ. Code §§ 44660
5 *et. seq.*

6 III. LEGAL STANDARD

7 A writ of mandate is proper to compel a governmental official to perform a ministerial act.
8 *California Educational Facilities Authority v. Priest*, 12 Cal. 3d 593, 598 (1974). The requirements for
9 a writ are: (1) respondent must have clear duty; (2) petitioner must have beneficial interest in
10 respondent's performance of that duty; (3) respondent must have the ability to perform the duty; (4)
11 respondent must have failed to perform duty or have abused his or her discretion in performing the
12 duty; and (5) petitioner must have no other plain, speedy or adequate remedy. *Agricultural Labor*
13 *Relations Bd. v. Exeter Packers, Inc.*, 184 Cal. App. 3d 483 (1986); Cal. Civ. P. Code § 1086.

14 IV. LEGAL BACKGROUND

15 A. The Stull Act

16 On July 20, 1971, the Governor and the California Legislature enacted the original Stull Act,
17 which addresses various issues of satisfactory and unsatisfactory performance of certificated personnel
18 (principally teachers and school administrators). The Stull Act mandates that all school districts adopt
19 standards of expected pupil achievement and periodically evaluate certificated employees as it
20 reasonably relates to the progress of pupils toward the standards of expected pupil achievement at each
21 grade level in each area of study as established by the district. Request for Judicial Notice In Support
22 of Motion for Writ of Mandate ("RJN") Exh. A.² Later in 1971, the Governor enacted AB 2999-
23 Russell (now California Education Code section 33039), directing the State Board of Education to
24 develop and disseminate guidelines for school districts to use in the development of their mandated
25 certificated personnel evaluation procedures. *Id.*

26
27 ² Petitioners concurrently file their Request for Judicial Notice. The Request contains public domain documents
28 received from the District from its website, exhibits the District filed before the PERB (Case No. LA-CE-5561-E), and
public documents the State Controller's Office produced pursuant to a Public Records Act request.

1 Other mandated components, not relevant here, were included in the original act and others
2 added later. Most significantly, through a bill sponsored by then Speaker Villaraigosa, the Legislature
3 mandated that certificated personnel be evaluated based upon the “*progress of pupils toward state*
4 *adopted academic content standards as measured by state adopted criterion referenced assessments.*”
5 Cal. Educ. Code § 44662(b) (1). Significantly, the Stull Act continues to distinguish the “progress of
6 pupils” factor from the “instructional techniques/strategies” factors. In so doing, amendments
7 preserved and strengthened the original language requiring the inclusion of pupil progress as a
8 necessary component of an evaluation of certificated instructional personnel related to the fulfillment
9 of the employees’ defined job responsibilities.

10 In February, 1972, pursuant to AB 2999, the State Board of Education approved the “California
11 State Board of Education Guidelines for School Districts to Use in Developing Procedures for
12 Evaluating Certificated Personnel, as recommend for approval by Wilson Riles, Superintendent of
13 Public Instruction,” and disseminated the guidelines to all school districts. RJN Exh. B at p. 1. The
14 guidelines illuminate the purpose of the Stull-Act-evaluations by noting that such systems provide for
15 the identification of:

- 16 • individuals with outstanding competence and performance so that they may be
17 commended and serve as models to their peers;
- 18 • conditions under which individuals serve which handicap the effectiveness of their
19 services so that such conditions may be remedied;
- 20 • weaknesses in the performance of individuals so that assistance may be provided to help
21 such personnel overcome their operational deficiencies and become more effective; and
22 • personnel whose services are unsatisfactory to such a degree that they should be
23 reassigned or terminated.

24 In 1995, the legislature explicitly amended the Stull Act to make clear that certificated
25 personnel may be dismissed for *unsatisfactory* performance rather than the more egregious standard of
26 incompetent performance. Witlin Decl. ¶ 20, Exh. S at 2. The 1995 amendment underscored that the
27 standard for satisfactory performance must consider the certificated employees’ on-the-job
28

1 performance including the degree to which children are learning toward grade level standards of
2 expected pupil achievement. Ed. Code §§ 44662, 44932, 44934, and 44938 as amended by AB
3 729/Statutes of 1995.

4 **B. The Villaraigosa Amendments**

5 Significantly in 1999, the legislature again amended the Stull Act to mandate that all applicable
6 certificated personnel evaluations *also* include measures of pupil progress toward state adopted
7 academic content standards as measured by state adopted criterion-referenced assessments. Witlin
8 Decl. ¶ 3 Exh. B at p. 3. The Villaraigosa Amendments also established the California Peer Assistance
9 and Review Program for Teachers, which enacted various provisions to recognize exemplary educators
10 and address sub-par performance. In amending the Stull Act again, the Legislature specifically chose
11 to amend paragraph (1) and not paragraph (2) of Section 44662(b). This choice is important. Section
12 44662 (b)(2) deals with the review of an employee’s “instructional technique” or “strategy” also
13 known as pedagogical approach or the tactics of teaching. Section 44662 (b)(1) on the other hand
14 governs the assessment of how well the employee’s students learned the subjects required to be taught
15 to them, irrespective of the techniques the teacher used.

16 **C. The Stull Act Requires the LAUSD Periodically to Review and Evaluate All Its**
17 **Certificated Personnel for the Benefit of Its Students.**

18 By enacting the Stull Act (and its significant amendments), five governors and the legislature
19 enacted and refined a mechanism for holding teachers and administrators accountable. The purpose
20 being to protect students through identifying sub-par employee performance and prescribing
21 mandatory help to the employee. In turn, these evaluations result in more effective instruction to the
22 benefit of students.

23 The Stull Act explicitly mandates that the governing board of each school district establish
24 local standards of pupil achievement at each grade level in each area of study. Cal. Educ. Code
25 §44662(a). The legislature also codified guidelines for “objective evaluation and assessment.” Cal.
26 Educ. Code §§ 44660, 44662. These guidelines may be uniform throughout the District, or for
27 compelling reasons, be individually developed for territories or schools. *Id.*

1 The Stull Act also mandates that all school districts adopt objective evaluation and assessment
2 guidelines for certificated personnel. At a minimum, the criteria must include distinct factors of “pupil
3 progress,” “instructional techniques/strategies,” “adherence to curricular objectives,” “establishing
4 and maintaining a suitable learning environment,” and “result from the Peer Assistance and Review
5 Program participation, if applicable.” Cal. Educ. Code § 44662(b). In accordance with the Stull Act,
6 the governing board of each school district must evaluate and assess certificated employee
7 performance as it reasonably relates to “[t]he progress of pupils toward the standards established [by
8 local districts] and, if applicable, the state adopted academic content standards as measured by state
9 adopted criterion-referenced assessments.” *Id.*

10 1. State Standards and Assessments

11 The California State Board of Education (SBE) adopted first ever state standards in the core
12 content curriculum beginning in late 1997 and early 1998. By 1999 and over the next few years, the
13 SBE directed the development of California standards-aligned augmentations to off-the shelf state
14 adopted tests and then later directed the development of and adopted customized stand-alone
15 California criterion referenced tests aligned to the state’s standards. . These assessments, including the
16 California Standards Tests (“CSTs”), cover core content areas specified in statute for each grade 2 to
17 11. CSTs now comprise a key part of the California Standardized Testing and Reporting Program
18 (“STAR”). Among several state adopted assessment instruments, the STAR program tests, including
19 the CSTs constituted state adopted criterion-referenced assessments for the purpose of triggering the
20 Stull Act’s state “progress of pupils” evaluation factor. Cal. Educ. Code §§ 60640 *et seq.*, 60642.5.
21 Cal. Admin. Code Title 5 § 850 (g); RJN Exh. C.

22 2. Local District Standards and Assessments

23 In addition to state created standards and assessments, the LAUSD established standards of
24 expected pupil grade level achievement in various content areas. RJN Exh. D at p. 4. Beginning
25 approximately in 1996, the District conducted a major review of district adopted standards. As the
26 State adopted standards came online, the District periodically revisited its local standards of expected
27 pupil achievement and modified its local standards accordingly. As it modified its standards, the
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1 LAUSD provided its certificated staff with side-by-side comparisons of district adopted standards with
2 state adopted standards and related state- and local- assessments. *Id.*; RJN Exh. E.

3 In addition, the District and its certificated staff have used multiple locally developed and
4 approved measures of pupil progress including customized District assessments, periodic assessments,
5 personnel-developed classroom assessments, letter grades, unit credit, grade promotion standards,
6 portfolios of student work, and graduation standards. Witlin Decl. ¶ 4, Exh. C.

7 Moreover, the District has possessed STAR Program assessment data for statutorily specified
8 core content areas in all grades 2 to 11 for approximately 10 years, which links student progress to
9 certificated personnel. Cal. Educ. Code §§ 60641, 60642.5, 60643. This data includes criterion
10 referenced assessments and state adopted criterion-referenced scores measuring the progress of pupils
11 toward state adopted academic content standards that have also been folded into the District's
12 standards.

13 **D. The District Must Endeavor to Assist Certificated Personnel**

14 The Stull Act additionally requires the District superintendent or his or her designee to confer
15 with any employee who receives an unsatisfactory performance evaluation, make specific
16 recommendations as to areas of improvement in the employee's performance, and endeavor to assist
17 the employee in his or her performance. Cal. Educ. Code §§ 44664(b), 44665. The Stull Act further
18 mandates that "[e]valuation and assessment made pursuant to [the Stull Act] shall be reduced to writing
19 and a copy thereof shall be transmitted to the certificated employee not later than 30 days before the
20 last school day scheduled on the school calendar adopted by the governing board for the school year in
21 which the evaluation takes place." Cal. Educ. Code § 44663(a).

22 **E. State Mandate and Reimbursement Provisions**

23 The cost of compliance with several elements of the Stull Act need not be a burden on local
24 school districts. Because all the post 1975 amendments and the 1999 Villaraigosa amendment
25 strengthening the pupil progress factor created new additions to the original state mandate, all
26 associated marginal costs are eligible for state-reimbursement. Indeed, on May 27, 2004, the
27 California Commission on State Mandates (Commission) adopted the Statement of Decision for *The*
28

1 *Stull Act* test claim, opining that the Villaraigosa measure constituted an urgency statute operative March
2 15, 1999. Therefore, costs incurred for compliance with the Villaraigosa Amendment pertaining to pupil
3 progress was eligible for reimbursement on or after March 15, 1999. RJN Exh. F at p. 3.

4 Almost unfathomably, by its own admission, since at least the 2006-2007 school year, the
5 LAUSD has not sought reimbursement for compliance with the Stull Act’s mandate to evaluate
6 certificated personnel toward pupil progress. Witlin Decl. ¶ 11, Exh. J at 4. In other words, *the*
7 *LAUSD leaves millions of dollars available to the District annually on the table.*

8 **V. FACTUAL BACKGROUND**

9 **A. LAUSD Admits Its Current Evaluation System Does Not Take Into Account Pupil**
10 **Progress toward Local Standards or State Adopted Standards.**

11 Notwithstanding its statutory obligations under the Stull Act, the District does not currently
12 evaluate teachers and administrators based upon pupil progress. *See, e.g.* Deasy Depo. 104:5-13 (“The
13 form -- summative evaluation form of the teachers does not contain information about the progress of
14 students in an individual teacher's classroom.”). Unfortunately, the District’s current system of teacher
15 and administrator evaluations is broken. Dr. Deasy recognizes that changes are necessary because “the
16 current system doesn’t best serve adults or students ... the system itself that we currently use is absent
17 kind of the fundamental goal of the whole process of an education, and that is how do students do.”
18 Witlin Decl. ¶ 5, Exh. D, Deasy Depo. at 34:14-35:22.

19 The District has a myriad of different ways to take pupil progress into account. For example,
20 individual letter grades, grade point average, pass-fail rates, meeting A-G college prep requirements,
21 units for high school graduation, ACT & SAT scores, AP class enrollment, periodic assessments,
22 student portfolios, and other locally gathered and available information. Witlin Decl. ¶ 4, 6, 7, Exhs.
23 C, E, F. Ironically, LAUSD grades itself on these metrics but refuses to use them to gauge pupil
24 progress with respect to certificated personnel evaluations. *Id.* Furthermore, the LAUSD has adopted
25 specific standards *in addition* to state standards regarding promotion and graduation. Deasy Depo.
26
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1 124:10-125:24.³ Finally, the District undertook a significant study that created a metric designed to
2 measure pupil progress, called Academic Progress Over Time (“AGT”). However, the District uses
3 none of these in its evaluation process.

4 The current system of teacher evaluation “does not have a discrete component by which
5 teachers are provided information as part of the evaluation process, using student outcome and student
6 achievement indicators over time.” Deasy Depo. 25:7-11. Nor does it have a uniform process to
7 include student achievement or pupil progress. Deasy Depo. 25:13-22. Similarly, student achievement
8 is not used in the evaluations for administrators. Deasy Depo. 26:2-8.

9 While there is some expectation that a teacher will make pedagogical changes to adjust
10 instruction, in terms of actually using student academic outcomes in the teachers’ year-end
11 performance evaluation, “It’s not used.” Deasy Depo 66:15-67:17. That data is “not used” as part of a
12 teachers’ evaluation. Deasy Depo. 69:15-22. Remarkably, the District appeared to use pupil progress
13 as factor in its evaluations in the 1970’s and 1980’s and as recently as 1986. However, inexplicably,
14 the District dropped this mandatory element from the evaluation process and has failed to explain why
15 the District stopped using it. Deasy Depo. 106:21-107:12.

16 The District’s failure to take into account pupil progress is systemic. The District’s initial
17 planning sheet – i.e. the very first step in conducting certificated personnel evaluations – does not
18 include any reference to objectives with respect to student progress and achievement for grade level.
19 Deasy Depo. 99:4-100:4; Witlin Decl. ¶ 8, Exh. G. The initial planning sheet makes no mention of
20 pupil progress because it is not part of the current planning system. *Id.* The Instructional Personnel
21 Final Evaluation form, which is the District formal evaluation document signed by the Evaluator,
22 Reviewing Administrator, and the certificated instructional employee contains 27 separate prompts for
23 specific ratings as “Meets”, “Needs Improvement” or “No.” Witlin Decl. ¶ 9, Exh. H. None of the 27

24 _____
25 ³ While the District and the Real Parties in Interest may argue that student progress is used in the employee
26 assessments, the only factors that look to the use of any measure of pupil progress are those based upon how an educator
27 uses student progress measures to adjust instruction for the specific child or specific group of children. Deasy Depo.
28 62:15-63:12. This difference is the one between how well the employee *utilizes* student test data in preparing to tailor
student instruction and the *employee* being evaluated based upon evidence of pupil progress toward the expected level of
pupil achievement at each grade level in each area of study. The Legislature did not choose to include the term “pupil
progress” as a criterion in assessing pedagogical technique (although it can additionally be used as such). It mandated the
factor be used as its own distinct factor as part of the overall evaluation.

1 categories includes a prompt to evaluate and assess the certificated employees' job performance as it
2 reasonably relates to evidence of pupil progress toward local standards of expected pupil achievement,
3 or if applicable, pupil progress toward state adopted academic content standards as measured by state
4 adopted criterion referenced assessments. The same goes for the District's Certificated Management
5 Personnel Final Evaluation; none of the six separate prompts for specific ratings include a prompt to
6 evaluate and assess the certificated employees' job performance as it reasonably relates to evidence of
7 pupil progress toward local standards of expected pupil achievement, or if applicable, pupil progress
8 toward state adopted academic content standards as measured by state adopted criterion referenced
9 assessments. Witlin Decl. ¶ 10, Exh. I; Deasy Depo 104:8-13. From start to finish, the District fails to
10 take into account pupil progress toward local or state standards.⁴

11 Even if evaluators wished to take advantage of evidence of the pupils' progress in evaluations,
12 they could not because they don't have the training. In the current system teachers and administrators
13 are not trained with any regularity or in any kind of uniform way – certainly not in conformity with the
14 pupil progress factor in the Stull Act. Deasy Depo 126:24-127:5 (“I would have to say to my
15 knowledge that training is intermittent, not uniform. It doesn't look anything like the proposed training
16 that we're doing actually in our pilot.”). LAUSD's failure to train its staff in the reasonable use of
17 pupil progress toward expected standards of achievement in the performance evaluation of adults
18 another of several ways the District fails to comply with the relevant Stull Act mandates.⁵

19
20
21
22
23
24 ⁴ Under Cal. Educ. Code § 44664, certain senior personnel need only be evaluated every five years. However,
because the District has never properly evaluated its personnel, this provision cannot apply and the District must evaluate
all of its staff on a yearly cycle.

25 ⁵ The District provides some training materials to evaluators. For example, the District provides a training sheet
26 created to help employees understand the LAUSD “teacher evaluation process.” Witlin Decl. 8 ¶, Ex. G; Deasy Depo at
60:6-61:5. The training material lists “four general areas from which the indicators are used.” *Id.* Those areas include
27 support for student learning, planning & designing instruction, classroom performance, and developing as a professional
educator. *Id.* However, conspicuously missing is evidence of pupil progress toward standards of expected achievement or
28 evaluating the teacher based upon the achievement of the teacher's pupils because “[t]hat is not how it's currently used.”
Deasy Depo at 62:3-63:12.

1 **B. LAUSD Admits Its Current Evaluation System Does Not Take Into Account Pupil**
2 **Progress Results From State –Adopted Criterion Referenced Assessments**

3 The District fails to take into account the results of state-adopted criterion referenced standards
4 also required by the Stull Act. Cal. Educ. Code §§ 44660 *et seq.*

5 The LAUSD has the means and the know-how to take advantage of the state adopted tests. In
6 this context “CST” is “the California assessments that we use, so they are the state testing as part of the
7 STAR testing program.” Deasy Depo. 64:5-7. STAR tests are criterion-referenced assessments.
8 Deasy Depo. 64:24-65:3. Dr. Deasy was asked flat-out “currently, under the current system, teachers
9 [are] not being evaluated based upon how well their students are performing on these California
10 criterion-referenced assessments; is that correct?” Dr. Deasy replied, “*We do not currently construct*
11 *evaluations of teachers by using how students do over time in terms of their academic outcomes.*”
12 Deasy Depo. at 66:15-67:4 (emphasis added).

13 **C. Because LAUSD’s Evaluations Do Not Comply With the Stull Act with Respect to “Pupil**
14 **Progress” Toward State Standards, It Has Been Unable to Seek Full Reimbursement for**
15 **Such Costs**

16 When Petitioner requested any documents reflecting reimbursement for costs associated with
17 implementing any of the mandates of the Stull Act, LAUSD responded:

18 To the best of Defendant's knowledge, dating back to a least the 2006-07 school year,
19 the Los Angeles Unified School District has submitted no claim for state mandated
20 costs for Stull Act compliance.

20 Witlin Declaration ¶ 11, Exh. J at 4.

21 As explained above, Section 6 of Article XIII(B) of the California Constitution provides for the
22 reimbursement of state mandates added to existing law. RJN Exh. F. In the decades since the
23 California Legislature enacted amendments to the Stull Act that permit reimbursement for costs above
24 compliance with the original statute, the LAUSD has not sought reimbursement for such expenses –
25 including the marginal costs to evaluate certificated employees’ performance as it relates to pupil
26 progress toward state adopted standards based on state adopted criterion referenced assessments.

27 While in the past the LAUSD briefly sought reimbursement for *other* state mandated expenses,
28

1 the LAUSD conspicuously failed and continues to fail to seek reimbursement for
2 “Evaluation/Assessment – Ed. Code § 44662, subd. (b)” and other reimbursable Stull Act related costs
3 associated with:

- 4 • Review STAR Results
- 5 • Assessment per STAR
- 6 • Evaluating and assessing CIE per certain criteria
- 7 • Writing Evaluations
- 8 • Transmitting evaluation
- 9 • Attaching to personnel file
- 10 • Discussing evaluation

11 RJN Exh. G; Declaration of William Lucia Exh. 2.

12 **D. LAUSD Creates a “Growth” Metric To Measure Pupil Progress**

13 The District is more than capable of incorporating pupil progress into its evaluations. “We
14 have constructed an indicator that is the academic growth over time [“AGT”], and we've done exactly
15 the opportunity to provide teachers with knowledge of – by virtue of our algorithm and formula, their
16 contribution to student and groups of students' academic growth over time.” Deasy Depo. 71:22-72:2.

17 The District spent a great deal of time and effort in constructing their AGT formula:

18 [T]his is a highly sophisticated construction. . . . I mean, it's well-published; it's well-
19 documented. University of Wisconsin was our technical partner in the construction of
20 the academic growth over time. We have certainly examined -- I and others have
21 examined all of the known academic growth over time formulas in the United States;
22 we have -- including the technical brief that the LA Times used for its own one, which is
23 not ours. And that its construction -- what we do is accounts for factors, where I would
24 say it is both sophisticated and highly evolved, and that is the formula that we use. So
25 its contribution is derived by taking into account factors that both research -- you know,
26 have pointed -- have effects on student achievement. For example, youth who live in
27 circumstances of poverty versus youth who do not. Youth who did not speak English as
28 their first language versus youth who do, et cetera.

24 Deasy Depo 72:14-73:9. The District was “very careful in constructing the AGT that provides teachers
25 maximum information, highest level of accuracy, and takes into account those items which involve the
26 literature.” Deasy Depo. 79:17-20

27 The LAUSD is helmed by a capable and competent superintendent. Dr. Deasy recognizes the

1 flaws inherent in current evaluations and recognizes that the system must change to better suit the
2 students and the teachers:

3 I believe that evaluations are and should be used for two different but simultaneous
4 purposes. That they should be able to support the improvement of the profession, the
5 acts of the profession, the act of instruction, the act of teaching, the act of assessment,
6 the act of questioning, all of the components that lead to students learning.... **And I
7 think it should include measures of how students do over time.**

8 Deasy Depo. 120:10-122:6 (emphasis added).

9 While AGT would appear to satisfy a component of the pupil progress factor in the Stull Act
10 mandate, the most significant issue with the District's AGT metric is that it is not used in the formal
11 evaluations mandated for existing certificated staff. But the fact remains that the District is capable of
12 complying with the Stull Act immediately; it just fails to comply.

13 **E. LAUSD Initiates A "No Stakes" Pilot Program To Test The Growth Measure**

14 Recently, the District embarked upon an experiment to examine how it might try to include
15 pupil progress as a factor in certificated employee job performance evaluations (the "Pilot Program").
16 A pilot may have been appropriate 39, 38 or even 10 years ago, but not after decades of dereliction of
17 duty and child neglect.

18 While the Pilot Program is a step in the right direction (as it takes into account multiple
19 measures of teacher performance, and includes the pupil progress as a mandatory factor in evaluating
20 and assessing certificated employees' job performance) the Pilot Program does not comply with the
21 Stull Act because the District has attached "no stakes" for any of the volunteer principal and teacher
22 participants. "No stakes" means "that the volunteer participants will not be negatively evaluated
23 during the test year [based] upon the quality of their implementation of the pilot activities." Deasy
24 Depo. 55:15-24. That being said, the difference between the current system and that proposed by the
25 Pilot Program is vast. Deasy Depo 22:2-23:17. Indeed, in the Pilot Program, as opposed to the current
26 system, principals and other evaluators "go through a lengthy training, and they actually get
27 certificated that they have a level of competency to master the framework for learning." Deasy Depo.
28 23:21-24:4. Additionally, the volunteer participants in the Pilot Program are exempt from evaluation
under the current evaluation system. Thus, these volunteers are not being evaluated at all for the

1 current year.

2 Moreover, even the LAUSD's own label for the Pilot Program, "Three-Year, Three-Phased
3 Plan," demonstrates that the program fails to bring the LAUSD into immediate compliance with the
4 Stull Act. Witlin Decl. Exh. K. Even in the coming academic year, 2012-2013, the District intends
5 only to use AGT on a no stakes basis for the entire population of teachers and administrators.

6 **F. The Teachers' and Administrators' Unions Have Encouraged the District's Non-**
7 **Compliance**

8 Even the above belated timeline of delayed exploratory efforts at compliance currently planned
9 by the District is in question because of the recalcitrance of the Real Parties in interest who believe that
10 their right to bargain over the evaluations trumps the rights of the children to have their certificated
11 members evaluated, aided, and held accountable. United Teachers Los Angeles ("UTLA") has taken
12 significant steps to prevent the District from complying with the Stull Act and using pupil progress
13 measured in any way, including student test scores from state adopted criterion referenced assessments
14 in the evaluations of teachers. When asked if he has heard the UTLA express hostility toward
15 incorporating student progress data in evaluating teachers: "I hear it all the time." Deasy Depo.
16 118:19. Indeed, UTLA's manifesto on the Stull Act states that its position is that "standardized test
17 scores should *play no part* in high stakes decisions such as dismissal" Witlin Decl. ¶ 13, Exh. L
18 (emphasis added).

19 Shockingly, the UTLA published a warning to its members that states "if your administrator
20 makes any indication or comments on your Stull evaluation that ties your evaluation to student test
21 scores in any way, talk to your chapter chair who will then contact your school and UTLA
22 representative." Witlin Decl. ¶ 14, Exh. M. This flabbergasted Dr. Deasy:

23 Because I thought we were supposed to always be talking about how students are doing.
24 That's the fundamental business we're in, is how students do. And the fact that if a
25 principal made any indication about how students were doing whatsoever or
26 commented on your evaluation how students are doing, you were to go then get your
27 chapter chair, and that chapter chair would then contact your area representative. It
28 seemed to me to be the kind of antithesis to the kind of professional conversation we
were hoping for and set it as completely adversarial. That was one of the things that
went through my mind.

Deasy Depo. 114:23-116:10.

1 1. LAUSD Admits It Has No Agreement With AALA or UTLA To Permit it to
2 Incorporate Pupil Progress as Required in the Stull Act in Performance
3 Evaluations

4 The LAUSD's failure to protect children's fundamental right to a basic education by
5 conducting lawful evaluations of its certificated personnel is not surprising given the historical
6 opposition of groups of politically powerful adults: the administrators, represented by the Associated
7 Administrators Los Angeles ("AALA"), and the teachers, represented by the UTLA. Both the AALA
8 and the UTLA have historically fought against certificated personnel evaluations being conducted in
9 any way that incorporates the reasonable evaluation and assessment of evidence of the employee's
10 contribution to actual student learning toward grade level expectations. The result is decades during
11 which prior LAUSD superintendents and school boards found it convenient to enter into unlawful
12 collective bargaining contracts with these associations that prevented compliance with the statutory
13 mandate of evaluating certificated staff based even in part on available evidence of whether or not the
14 children are learning. The District is therefore unable to properly identify staff needing specific help,
15 who need improvement in addressing pupil progress.⁶

16 Dr. Deasy has been involved in the bargaining process with the AALA and UTLA from the start
17 of his tenure with the District. Deasy Depo. 17:9-12. He is responsible for the bargaining team that
18 presents final proposals to the unions. Deasy Depo. 18:15-17. As a result, he knows that the current
19 collective bargaining agreement ("CBA") between the AALA and the LAUSD does not allow for
20 administrators to be evaluated as mandated by the Stull Act regarding the progress of pupils toward the
21 standards established pursuant to Section 44662(a) and, if applicable, the state adopted academic
22 content standards as measured by state adopted criterion-referenced assessments. Witlin Decl. ¶ 15,
23 Exh. N. Similarly, the 2008-2011 CBA between the LAUSD and the UTLA does not allow for
24 certificated staff to be evaluated as mandated by the Stull Act regarding the progress of pupils toward
25 the standards established pursuant to Section 44662(a) and, if applicable, the state adopted academic
26 content standards as measured by state adopted criterion-referenced assessments. Witlin Decl. ¶ 16,

27 ⁶ The District thus far refused to produce any documents related to the unsatisfactory performance of certificated
28 employees before the date of this brief. Thus, it is impossible for Petitioners to determine which certificated employees
require staff development and fail to receive it, and those that receive staff development but do not need it.

1 Exh. O

2 The LAUSD and the UTLA and AALA are currently involved in completing negotiations over
3 new CBAs. Unfortunately, there is no agreement with AALA as to what would actually constitute a
4 “Phase 3” of the Pilot Program, or if it would have any stakes, or when in the future it would be
5 operational and for how long it would last. Deasy Depo. at 32:3-9. Similarly, for the 2012-2013
6 academic year, there's no agreement with UTLA with respect to participation in the Pilot Program.
7 Deasy Depo. 53:11-14.⁷

8 In fact, the only agreement on the subject between UTLA and LAUSD actually prevents
9 LAUSD from using pupil progress on a “stakes” basis. In December of 2011, both the UTLA and the
10 LAUSD entered into a Statement of Joint Interest. Witlin Decl. ¶ 17, Exh. P. While UTLA pays lip
11 service to using multiple measures in evaluations, the Statement of Joint interest requires that *all*
12 *potential changes* to the current evaluation system be on a “no stakes” basis. *Id.* The Statement of
13 Joint Interest, makes no mention of when, or if, future changes will ever be on a “stakes” basis or
14 whether one of the agreed upon multiple measures would ever be reasonable evidence of pupil
15 progress, when applicable.

16 **G. Petitioners Exhausted All Other Avenues for Redress**

17 1. Petitioners Notified Respondents of Their Failure to Perform and Demanded
18 They Comply With the Stull Act

19 Because of the LAUSD’s years of non-compliance with the Stull Act, including a decade of
20 ignoring the fully state-reimbursable Villaraigosa amendment to the pupil progress mandate,
21 Petitioners demanded that the LAUSD comply with the Stull Act in its entirety. Specifically, on
22 October 26, 2011, Petitioners sent a letter to Superintendent Deasy, with a copy to all members of the
23 Board of Education, demanding that the LAUSD (a) comply with the Stull Act by implementing a
24 comprehensive program of evaluating certificated employees’ performance as its relates to specified

25 _____
26 ⁷ The Associations originally sought to block the Pilot Program, which itself is non-compliant with the Stull Act and
27 sadly too little too late for the millions of children who have attended schools in Los Angeles over the past forty years. In
28 challenging even a no-stakes experiment and attempt to explore options to evaluate certificated personnel based upon the
children’s progress toward the established academic standards, each politically powerful association of adults further
demonstrated its callous disregard for the Constitutional rights of the children of the LAUSD to basic education equality in
the public schools, and the state mandated help to struggling adults in their own membership.

1 mandated elements, including but not limited to, pupil progress as its reasonably relates to the
2 standards of expected pupil achievement at each grade level in each area of study as established by the
3 District and, if applicable, the state adopted academic content standards as measured by state adopted
4 criterion-referenced assessments; (b) refrain from entering into any agreement with either the AALA or
5 the UTLA that includes an evaluation system that does not fully comply with the Stull Act or that
6 delays or otherwise prevents the District from implementing a comprehensive program of evaluating
7 certificated employees' performance as required by the Stull Act; (c) immediately evaluate, in full
8 compliance with the Stull Act, *all* applicable certificated personnel regardless of tenure status; (d)
9 immediately revoke its consent to evaluate certain certificated personnel less frequently than every
10 other year; and (e) confer with any employee who receives an unsatisfactory performance evaluation,
11 make specific recommendations as to areas of improvement in the employee's performance, and
12 endeavor to assist the employee in his or her performance, as required by Education Code section
13 44664(b). Witlin Decl. ¶ 18, Exh. Q. Respondents flatly refused Petitioners' demand. Witlin Decl. ¶
14 19, Exh. R.

15 2. Petitioners Have No Other plain, Speedy or Adequate remedy

16 Here, Petitioners have no other plain, speedy, or adequate legal remedy to compel Respondents
17 to perform their mandatory legal duties. There are no administrative remedies to exhaust. Only in this
18 proceeding may Petitioners receive the entire remedy due to them.

19 VI. ARGUMENT

20 A. The District Must Comply With the Stull Act

21 1. LAUSD Must Evaluate Teachers and Administrators Based Upon Pupil Progress
22 toward Locally Adopted Academic Standards

23 The Stull Act requires that the governing board of each school district evaluate and assess
24 certificated employee performance as it reasonably relates to the progress of pupils toward the
25 standards adopted by the district locally.⁸ Yet, the LAUSD does not lawfully evaluate its certificated
26

27 ⁸ Even if state test scores were not available the District has numerous metrics of pupil progress available at its
28 disposal, which the District has adopted at a local level: individual letter grades, grade point average, pass-fail rates,
meeting A-G college prep requirements, units for high school graduation, ACT & SAT scores, AP class enrollment,

1 staff because they perform incomplete assessments of job performance by failing to require evaluators
2 to assess how the employee's performance relates in any way to (a) actual progress of pupils toward
3 the standards established by the district pursuant to Section 44662(a) and, if applicable, (b) the state
4 adopted academic content standards as measured by state adopted criterion-referenced assessments.
5 The failure to assess based upon pupil progress violates Section 44662(b)(1). Neither the
6 Superintendent nor a designee confers with employees who are not performing their duties in a
7 satisfactory manner based on actual pupil progress. As a result, neither the Superintendent nor a
8 designee makes specific recommendations as to areas of improvement in the employee's performance
9 or endeavors to assist the employee to achieve a higher level of performance with respect to
10 contributing to the expected achievement of pupils on local standards for students in their charge to
11 address unsatisfactory performance. Moreover, the LAUSD does not reduce legally compliant
12 evaluations to writing or add such evaluations to part of the certificated employees' permanent records
13 as required by Section 44663.

14 As if the blatant disregard of its statutory obligations were not bad enough, pursuant to the
15 California Constitution, the District must ensure that children have equitable access to a quality public
16 education to preserve the fundamental right of basic educational equality and opportunity to learn.
17 This fundamental right can only be accessed when the District and the Superintendent ensure that the
18 certificated employees of the District are performing in a satisfactory manner. Satisfactory
19 performance is measured in part by how well the students under their charge are progressing toward
20 the standards of expected pupil achievement at each grade level. Thus, the failure to comply with the
21 Stull Act likely violates the Constitutional rights of the children of the District as well. *See, Serrano v.*
22 *Priest*, 18 Cal. 3d 728, 765-66 (1976); *Butt v. State of California*, 4 Cal. 4th 668 (1992).

23 All the prerequisites for an evaluation system that fully complies with the Stull Act are in place:
24 locally adopted standards, state adopted academic standards, various local measures of student
25 progress, and state adopted criterion-referenced assessments aligned to the state adopted content
26

27
28 portfolios of student work, and other locally gathered and available information. Witlin Decl. ¶ 4, Exh. C, ¶ 6, Exh. E, ¶ 7,
Exh. F.

1 standards, including the CSTs. The District has the ability to reasonably use this evidence in the
2 performance evaluation of its certificated employees, when applicable, but has abdicated its duty to
3 both the children and its own struggling permanent employees, which again harms the children.

4 2. Where applicable, LAUSD Must Evaluate Teachers and Administrators Based
5 Upon Pupil Progress toward State Adopted Academic Standards as Measured By
6 state-adopted Criterion Referenced Assessments

7 The District's failure and incomplete compliance is further evidenced by its failure to seek any
8 state reimbursement for the fully reimbursable costs above compliance with the original Stull Act. In
9 other words the District doesn't seek reimbursement for costs associated with the Villaraigosa
10 Amendment to Section 44662(b)(1), which unambiguously expanded the Stull Act mandate to require
11 evaluations based on expected pupil progress at each grade level toward state adopted academic
12 standards, as measured by State adopted criterion-referenced assessments, when applicable. Despite
13 the three and a half decades that have elapsed since the California Legislature and the People of
14 California established a process for local agencies to receive state reimbursement for new state
15 mandated costs and the over \$20 million in annual claims filed and funded for over 700 other school
16 districts in the state, the LAUSD has never sought full reimbursement for allowable expenses
17 associated with lawfully evaluating certificated employees pursuant to the provisions relating to pupil
18 progress in Section 44662 (b)(1). The LAUSD also has not submitted a mandated reimbursement
19 claim for any portion of the Stull Act's reimbursable requirements for a fiscal year after 2005-06.

20 The LAUSD thus ignores the statutory mandate to evaluate and assess the job performance of
21 certificated employees in part based on the progress of pupils toward the standards established by the
22 district pursuant to Section 44662(a) and, when applicable, the State Adopted academic content
23 standards as measured by state adopted criterion referenced assessments. The District cannot seriously
24 contend that the LAUSD currently reasonably complies with the Stull Act for *all* of its certificated
25 employees as required by law. As its public pronouncements and presentations make clear, it does not
26 currently evaluate teachers based upon the learning progress toward *any* standards of expected pupil
27 achievement at each grade level in each area of study for children in their charge.

28 The District has the necessary data to identify certificated personnel, including principals and

1 teachers, whose annual cohorts of students have consistently performed below the District's standards
2 of expected grade level pupil achievement, failed to graduate or earn a diploma, and also performed
3 below proficient or otherwise failed to evidence an academic year's worth learning as measured by
4 state adopted criterion referenced assessments aligned to state adopted academic content standards.
5 Reasonable use of this data would constitute evidence of student performance toward the state adopted
6 academic content standards as measured by state adopted criterion-referenced assessments in the
7 evaluation of certificated personnel, and toward District standards that incorporate state standards
8 grade level expectations.

9 3. The District "Can" Do It.

10 The District possesses student, teacher, and principal level data from various state adopted
11 criterion referenced assessments in the STAR Program, including the CSTs, that can be analyzed with
12 various reasonable methodologies, including, but not limited to, static, growth, value-added,
13 aggregated and disaggregated methodologies. These methodologies can control for race and ethnicity,
14 gender, special needs and socio-economic status. Students and personnel can also be evaluated
15 longitudinally. The data can also be used to compare individual cohorts' or multiple cohorts' absolute
16 or average performance from one year to the next based on the observed progress of all similar
17 students and the District's expectations for proficiency at each grade level. These methods of
18 evaluation could serve as lawful components of fully Stull Act compliant certificated employee
19 evaluations. To that end, LAUSD, with the help of the University of Wisconsin, created a sophisticated
20 algorithm that far surpasses raw data in its efficacy of predicting and explaining pupil progress. Deasy
21 Depo. 71:10-79:20. Yet, notwithstanding the data available to it, the District has not undertaken the
22 steps to lawfully and reasonably include this information in evaluations of certificated personnel as
23 applicable and required by law. Complete and willful omission of any explicit district policy mandate
24 or required component prompt in the final evaluation form to direct the evaluator to evaluate and
25 assess *any* data on the summative progress of the certificated employee's pupils toward the District's or
26 state adopted standards of expected grade level achievement in its entirety is an intentional failure to
27 comply with the law's mandate to reasonably incorporate pupil progress in certificated personnel
28

1 performance. Ignoring these mandatory obligations is not permissible under the letter of the law and
2 certainly does not uphold the District's children's fundamental right to a basic education under the
3 California Constitution.

4 The District also has not attempted to use this information systematically and in a uniform way
5 to provide specific recommendations as to areas of improvement in performance and to endeavor to
6 assist with correcting with unsatisfactory performance as required by Section 44664(b). Further,
7 because none of the certificated employees have ever been properly evaluated as required by the Stull
8 Act, the LAUSD may not lawfully grant consent as provided for in Section 44664(a)(3) to evaluate
9 certain certificated personnel as infrequently as once every five (5) years.

10 Evaluations of adults based upon progress toward the standards of expected pupil achievement
11 are not only mandated by the Stull Act, but are also necessary to secure the children's fundamental
12 right to basic educational equality and opportunity to learn by ensuring that the District is assigning
13 effective certificated staff to all children in a constitutionally equitable manner. Thus, this basic
14 information regarding whether children are learning must be considered in determining the basis for a
15 minimum satisfactory rating of certificated employees' performance.

16 Although it could have reasonably performed Stull Act-compliant evaluations, the District
17 continues to fail in its obligations to its students. The District's continued noncompliance with the
18 Stull Act eliminates any hope that it can evaluate, identify, and appropriately assist, mandate corrective
19 action, or ultimately dismiss substandard certificated personnel. These unassisted or undismissed
20 personnel contribute to rates of educational attainment that are far below the standard of proficiency
21 based on district or state expectations of pupil progress. The end result is that the children of Los
22 Angeles are deprived of their constitutional right to basic educational equality and the opportunity to
23 learn in public schools in the District.

24 **B. Petitioners Are Entitled to Their Reasonable Attorneys' Fees**

25 California Code of Civil Procedure § 1021.5 provides:

26 a court may award attorneys' fees to a successful party against one or more opposing
27 parties in any action which has resulted in the enforcement of an important right
28 affecting the public interest if: (a) a significant benefit, whether pecuniary or
nonpecuniary, has been conferred on the general public or a large class of persons, (b)

1 the necessity and financial burden of private enforcement, or of enforcement by one
2 public entity against another public entity, are such as to make the award appropriate,
and (c) such fees should not in the interest of justice be paid out of the recovery, if any.

3 Here, all requirements are met. If Petitioners are successful, the District will finally begin to
4 properly and reasonably evaluate its certificated personnel for the first time more than a decade. Such
5 evaluations will benefit the hundreds of thousands of students each year who attend schools in the
6 LAUSD. Moreover, this action has highlighted the District's failure to seek reimbursement for costs of
7 mandated evaluations. As a result, if ordered to comply with the Stull Act, the District will be entitled
8 to reimbursement of the costs of a legally compliant program. Finally, Petitioners seek no financial
9 recovery on their own. Petitioners primarily seek equitable relief and there is no recovery from which
10 attorneys' fees could be paid. Thus, because Petitioners will have conferred a great benefit on the
11 public and there is no monetary recovery, Petitioners request attorneys' fees under Section 1021.5.

12 **VII. CONCLUSION**

13 There can be no dispute that the LAUSD's current evaluation system does not comply with the
14 Stull Act and that its current plans to institute a new system for the next academic year on a "no stakes"
15 basis similarly do not comply with the law. The District has the data to evaluate its teachers and
16 administrators based in part upon the progress of pupils as required by Section 44662(b)(1). With that
17 information, the District can then meet its obligations to put a compliant evaluation in the personnel
18 file of the teacher as required by Section 44663 and to provide unsatisfactory performers with
19 recommendations and assistance toward improving their performance. The failure to meet the
20 requirement of Section 44662(b)(1) means that none of the other required provisions of the Stull Act
21 can take place in a meaningful way.

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1 In light of the foregoing, Petitioners respectfully request a writ of mandate commanding the
2 LAUSD to immediately comply with California Education Code section 44660 et seq. and a
3 declaration confirming any component of the District's employment contracts or related memoranda of
4 understanding or statements of joint interest that purport to prohibit or preclude lawful complete
5 certificated employee evaluations violate the Stull Act. And, to require the district to rescind any five
6 year cycle of review for senior staff under Section 44664 until a complete Stull Act evaluation has been
7 conducted.

8
9 Dated: April 4, 2012

BARNES & THORNBURG LLP
R.D. Kirwan
Scott J. Witlin
Levi W. Heath
Devin Stone

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12
13 By  _____
14 Scott Witlin
Attorneys for Petitioners and Plaintiffs

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
4 not a party to the within action; my business address is: 2049 Century Park East, Suite 3550, Los
Angeles, CA 90067.

5 On April 4, 2012, I served the foregoing document(s) described as: **MOTION FOR WRIT
6 OF MANDATE** on the interested party(ies) below, using the following means:

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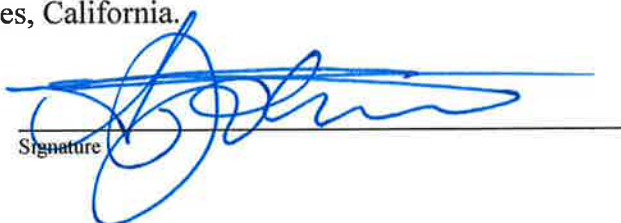
17
18 BY UNITED STATES MAIL I enclosed the documents in a sealed envelope or package addressed to the
19 respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and
20 mailing, following our ordinary business practices. I am readily familiar with the firm's practice of
collection and processing correspondence for mailing. On the same day that correspondence is placed
for collection and mailing, it is deposited in the ordinary course of business with the United States
Postal Service, in a sealed envelope with postage fully prepaid at Los Angeles, California.

21 BY MESSENGER SERVICE I served the documents by placing them in an envelope or package addressed
22 to the respective address(es) of the party(ies) stated above and providing them to a professional
messenger service for service.

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

25 Executed on April 4, 2012 at Los Angeles, California.

26 Andrea A. Johnson
27 Print Name


Signature