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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 FOR THE COUNTY OF LOS ANGELES

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

16
17 Petitioners and Plaintiffs,

18 v.

19 JOHN DEASY, Superintendent, Los Angeles
Unified School District; MONICA GARCIA,
President, Board of Education, Los Angeles
20 Unified School District; TAMAR
GALATZAN, BENNETT KAYSER,
21 MARGUERITE LAMOTTE, NURY
MARTINEZ, RICHARD VLADOVIC,
22 STEVE ZIMMER, Members, Board of
Education, Los Angeles Unified School
23 District; LOS ANGELES UNIFIED
SCHOOL DISTRICT; ASSOCIATED
24 AMINISTRATORS OF LOS ANGELES;
UNITED TEACHERS LOS ANGELES;
25 CALIFORNIA PUBLIC EMPLOYMENT
RELATIONS BOARD; and DOES 1 through
26 10, inclusive,

27 Respondents and Defendants.
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Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE AND PROHIBITION; VERIFIED
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

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1 **INTRODUCTION**

2 1. The nation’s second largest public school system known as the Los Angeles Unified
3 School District (“District” or “LAUSD”) annually fails hundreds of thousands of children, their parents
4 and guardians, taxpayers and the community it is responsible to serve. The children and their parents
5 bring this action to re-focus the District on its Constitutional duties to provide basic education equality
6 so that every child has the opportunity to learn and develop all of his or her potential, and to help
7 ensure the attainment of knowledge and an educated populace, which is essential for the preservation
8 of rights and liberties. The children and their parents ask the Court to enforce a reasonable and four-
9 decade old statutory state law that requires the District to evaluate certificated employees’ on-the-job
10 performance with data that reasonably measures, among other criteria, whether or not the students
11 under an employee’s charge are actually learning.

12 2. This action is brought by parents who have paid taxes for a school system that does not
13 comply with State law, and students who have been denied their fundamental right to basic educational
14 equality and opportunity to learn guaranteed by the California Constitution. *Serrano v. Priest*, 18 Cal.
15 3d 728, 765-66 (1976); *Butt v. State of California*, 4 Cal. 4th 668 (1992). Specifically, the parties seek
16 mandamus to compel the District to meet its obligations under a forty year old law, California
17 Education Code section (“Section”) 44660 *et seq.*, commonly referred to as “the Stull Act,” which
18 mandates that the District implement and enforce periodic evaluations of certificated personnel, mainly
19 administrators and teachers. (As used herein, the terms “certificated personnel” or “certificated
20 employee” mean and shall refer to all personnel assigned to positions within the District that require a
21 certificate or credential required by statute to be eligible for employment in an instructional or non-
22 instructional role, as specified.)

23 3. The Stull Act, which the State originally enacted in 1971, requires that the governing
24 board of each school district establish standards of expected pupil achievement at each grade level in
25 each area of study. The Act requires further that the governing board of each school district *also*
26 evaluate and assess the performance of certificated employees as it reasonably relates to the progress of
27 pupils toward the standards adopted by the district locally. The “evaluate and assess” aspect of the

1 Stull Act was expanded in 1999 to mandate additional pupil progress measures in the assessment of
2 certificated employees' performance: pupil progress toward the state adopted academic content
3 standards as measured by state adopted assessments. In other words, in addition to the progress of
4 students toward local standards the evaluations must also consider student progress toward a state
5 objective standard—the state's definition of grade level proficiency for each core academic content
6 area reported based on absolute proficiency—as opposed to how students perform compared to other
7 students that year or in a previous norm-referenced sample year. Such objective state adopted tests are
8 known as “state adopted criterion-referenced assessments.”

9 4. The District has never obeyed the Stull Act's mandate. The associations representing
10 certificated employees, after they initially failed to prevent the 1971 enactment of the Stull Act, and
11 after they failed in their efforts to actually repeal the mandate in the early 1970s, adopted an alternative
12 strategy of stonewalling implementation of the Stull Act. In collusion with the District's governing
13 boards and superintendents, these associations have made it impossible for the District to lawfully
14 evaluate certificated personnel and identify and require specific corrective action to retrain, transfer,
15 suspend, or dismiss unsatisfactory certificated personnel based, in part, on evidence which
16 demonstrates whether or not students are learning. Under the current personnel system, the District is
17 unable to mandate corrective action with specific recommendations and assistance, transfer, suspend,
18 or discipline ineffective certificated personnel unless they fail to meet an illegal standard of
19 satisfactory performance or are convicted of the commission of serious crimes leading to mandatory
20 credential suspension or revocation.

21 5. As a result, the adults' collective employment and political interests are turning the
22 childrens' opportunity to learn and their fundamental right to basic educational equality in the public
23 schools on its head and instead the system is protecting the working conditions of the certificated
24 personnel, as well as preserving the political power of the Board and the Superintendent; all of this
25 comes at the expense of our childrens' Constitutional guarantee of basic educational equality and
26 opportunity to learn. And worse for the disenfranchised and socio-economically disadvantaged
27 children, these adults have created systematic harm to students by disproportionately allowing contracts

1 to produce a concentration of under-qualified and ineffective certificated staff in chronically failing
2 schools.

3 6. There can be no dispute that the nation’s second largest school district is a broken
4 school system that has failed millions of children over the past 40 years and limited the future potential
5 of the children and community of Los Angeles in large part due to the failure of the adults who are
6 responsible for governing, managing and evaluating the District’s certificated personnel, by failing to
7 establish a lawful standard for satisfactory performance of certificated adults, which necessarily must
8 be based, at least in part, upon student progress. The very purpose of the District has been turned on
9 its head by adults focused on employment conditions and political power instead of individual
10 performance assessment and accountability measured at least in part on whether or not children are
11 actually progressing toward standards of expected achievement. It is simply unacceptable under
12 California Constitutional and statutory law to ignore the plight of students any longer.

13 7. This petition seeks a writ of judicial mandate to compel the LAUSD immediately to
14 comply with the clear mandate of the Stull Act and its strengthened statutory revisions, and further
15 seeks a preliminary injunction to enjoin the District, its Superintendent, members of the Board of
16 Education, and the representatives of certificated personnel from using collective bargaining force to
17 compel the District to continue to violate the Stull Act and from continuing to injure the children, their
18 parents and guardians, the community of Los Angeles and the State of California. Forty years of
19 deliberate and calculated non-compliance with such a key State requirement is enough.

20 **PARTIES**

21 8. Petitioners and plaintiffs are, and at all times mentioned in this petition were, minors
22 who reside in LAUSD school attendance zones, and/or are currently attending school in the LAUSD,
23 parents with minors currently living in LAUSD school attendance zones, and/or taxpayers of Los
24 Angeles County living within the boundaries of the LAUSD.

25 9. Petitioners and plaintiffs Abelito Doe, Angelita Doe, Brendita Doe, Bobby Doe,
26 Carmelita Doe, Erika Doe, Franny Doe and Gracie Doe (collectively, “Student-petitioners”) are minors
27 currently residing within the boundaries of the LAUSD.

1 10. As students residing within the boundaries of the LAUSD, student-petitioners have a
2 beneficial interest in the quality of their education, the enforcement of all State education laws, and the
3 assurance that certificated personnel are properly evaluated, rated, retained and promoted, supported
4 with additional training for unsatisfactory performance, transferred, or face mandatory corrective
5 action and other consequences as required by the law for continued unsatisfactory performance.

6 11. Petitioners and plaintiffs Jane Doe 1, Jane Doe 2, Jane Doe 3, Jane Doe 4, Jane Doe 5
7 and John Doe 1 (collectively, "Parent-petitioners"), file petitions to act individually as taxpayers within
8 the District and as guardians ad litem for the minor Student-petitioners.

9 12. Student-petitioners, Parent-petitioners, and the guardians *ad litem* plead under fictitious
10 names because of the personal nature of their suit and the real danger of physical or mental reprisal.
11 Student-petitioners and Parent-petitioners fear intimidation and retaliation against themselves and their
12 children for bringing this action. Thus, the circumstances justify the use of pseudonymous names.

13 13. Petitioner and plaintiff Alice Callaghan ("Callaghan") is, and at all times mentioned in
14 this petition was, a tax paying resident of Los Angeles County. As such, Callaghan has standing to sue
15 to enforce the fundamental right to basic educational equality guaranteed under the California
16 constitution for all children in the District. *See, e.g., Green v. Obledo*, 29 Cal. 3d 126, 144 (1981).

17 14. Respondent and defendant Superintendent John Deasy ("Superintendent" or
18 "Superintendent Deasy") is delegated authority by the LAUSD pursuant to Section 35026 and
19 otherwise. He is also the "employing authority" pursuant to Section 44665 and responsible under
20 Section 44664(b).

21 15. Respondent and defendant LAUSD is a school district organized pursuant to law and
22 possessing those powers set forth in Articles IX and XVI of the California Constitution and the laws of
23 the State of California.

24 16. Respondents Monica Garcia, Tamar Galatzan, Bennett Kayser, Marguerite LaMotte,
25 Nury Martinez, Richard Vladovic, and Steve Zimmer are members of the LAUSD Board of Education
26 (collectively, the "Board") and, as such, are responsible for ensuring the LAUSD's compliance with
27 the Stull Act. Cal. Educ. Code § 44662.

1 17. Defendant Associated Administrators of Los Angeles (the “AALA”) is a State of
2 California association organized as the exclusive bargaining representative for administrators of the
3 LAUSD and represents LAUSD middle managers and certain other certificated administrators and
4 other certificated non-instructional personnel. As described below, the Stull Act makes the AALA’s
5 past and current conduct and its collective bargaining contract demands illegal. The order sought by
6 this petition directly affects the AALA as a real party in interest because it would need to negotiate a
7 new collective bargaining agreement that complies with the statutory mandate of the Stull Act.

8 18. Defendant United Teachers Los Angeles (the “UTLA”) is a State of California
9 association organized as the exclusive bargaining representative for teachers in the LAUSD and certain
10 other certificated instructional and non-instructional certificated personnel numbering approximately
11 30,000 in the District. As described below, the Stull Act makes the UTLA’s past and current conduct
12 and its collective bargaining contract demands illegal. The order sought by this petition directly affects
13 the UTLA as a real party in interest because it would need to negotiate a new collective bargaining
14 agreement that complies with the Stull Act.

15 19. Respondent Public Employment Relations Board (the “PERB”) is a quasi-judicial
16 administrative agency charged with administering the collective bargaining statutes covering
17 employees of California’s public agencies.

18 20. The Superintendent and the LAUSD jointly and individually owe petitioners a
19 Constitutional and statutory duty to ensure that certificated personnel, including the Superintendent,
20 administrators, principals, and teachers be evaluated with multiple mandated measures of performance
21 related to their responsibilities, which must include measures reasonably based upon how well the
22 children are progressing toward the standards adopted locally in each area of study at each grade level,
23 and if applicable, state adopted academic content standards, as measured by state adopted criterion-
24 referenced assessments.

25 21. The District and the Superintendent jointly and individually owe petitioners the
26 statutory and Constitutional duty to comply with the Stull Act and ensure a uniform system of
27 evaluation for certificated staff that is lawful and, at the minimum, does not simply pass unsatisfactory
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1 and ineffective certificated employees from one school to the next or cluster these ineffective
2 certificated personnel in neighborhoods with high proportions of disenfranchised and highly at risk
3 children and parents.

4 22. The District’s obligations arise from its status as a political subdivision of the State
5 subject to the California State Constitution (with its own obligation to operate a system of public
6 schools that provides children with an opportunity to learn and access the fundamental right of basic
7 educational equality) and from the requirements of the Stull Act. These obligations exist
8 notwithstanding Section 35160 or any other provision of law. Further, Section 35036 limits the
9 District from simply transferring underperforming teachers from school-to-school. Thus, Section
10 35036 grants the school principals of the worst performing schools – those ranked 1 to 3, inclusive, on
11 the Academic Performance Index – the right to veto the transfer of certain teachers.

12 23. The Superintendent’s duties in this regard derive from statutes, including but not limited
13 to, Section 35026, which delegates to him the duties and powers of the District as described therein,
14 and the powers contained in all of Section 35035, particularly subdivision (d), and from Section 44665
15 which designates him as the “employing authority” for the purposes of the Stull Act.

16 24. The District, the Board, and the Superintendent have the legal obligation to enter into
17 lawful contracts and establish uniform systems for the evaluation of certificated personnel that include
18 statutorily mandated measures of whether or not children are learning at the expected standard of pupil
19 progress.

20 GENERAL ALLEGATIONS

21 A. Historical Legislative Background.

22 25. Upon signing Chapter 361, Statutes of 1971 (Assembly Bill 293-Stull) on July 20, 1971,
23 the Governor and the California Legislature enacted the original Stull Act, which addresses various
24 issues of satisfactory and unsatisfactory certificated personnel performance and unambiguously
25 mandates that all school districts adopt standards of expected pupil achievement and periodically
26 evaluate certificated employees as it reasonably relates to the progress of pupils toward the standards
27 of expected pupil achievement at each grade level in each area of study as established by the district.

1 26. Later that same year, on October 21, 1971, the Governor signed Chapter 1220, Statutes
2 of 1971 (Assembly Bill 2999-Russell), a State Board of Education sponsored companion to the Stull
3 Act, which enacted California Education Code Section 161 (now California Education Code section
4 33039), directing the State Board of Education to develop and disseminate guidelines for school
5 districts to use in the development of their mandated certificated personnel evaluation procedures.

6 27. Other mandated components were included in the original act and others added *later*,
7 including the assessments of the certificated employee's appropriate use of instructional techniques
8 and strategies, and adherence to curricular objectives, and later still, the Legislature *added additional*
9 *state mandated data to the "progress of pupils" Stull Act factor—progress of pupils toward state*
10 *adopted academic content standards as measured by state adopted criterion referenced assessments—*
11 an additional mandated component to the pupil progress requirement based on local district adopted
12 standards, without deleting or diminishing the then nearly three-decade old mandate.

13 28. Far from diminishing the Stull Act state mandate in any way, subsequent amendments
14 to the Stull Act signed into law by the next four Governors distinguished the "progress of pupils"
15 factor from the "instructional techniques/strategies" factor. In so doing preserved and strengthened
16 the original language pertaining to state mandated inclusion of pupil progress as a required and
17 necessary component in the lawful evaluation of certificated instructional and non-instructional
18 personnel, as it reasonably relates to the fulfillment of the employees' defined job responsibilities.

19 29. During a February 10-11, 1972 meeting, after involving over 4,500 educators, members
20 of school district governing boards, and school district legal advisers in more than 25 meetings, the
21 State Board of Education adopted the sixth and final draft of the "California State Board of Education
22 Guidelines for School Districts to Use in Developing Procedures for Evaluating Certificated Personnel,
23 as recommend for approval by Wilson Riles, Superintendent of Public Instruction," and directed it to
24 be disseminated to all school districts in the state pursuant to AB 2999.

1 30. The guidelines illuminate the purpose of uniform systems of evaluation and assessment
2 that meet the requirements of the law by noting that such systems provide for the identification of:

- 3 • individuals with outstanding competence and performance so that they may be
4 commended in an appropriate manner and so that they may serve as models to their
5 peers;
- 6 • conditions under which individuals serve which handicap the effectiveness of their
7 services so that such conditions may be remedied;
- 8 • weaknesses in the performance of individuals so that assistance may be provided which
9 is designed to help such personnel overcome their operational deficiencies and become
10 more effective and efficient; and
- 11 • personnel whose services are unsatisfactory to such a degree that they should be
12 reassigned or terminated.

13 31. In 1995, the Stull Act was notably amended once again by Chapter 392, Statutes of
14 1995 (Assembly Bill 729-Davis) to make explicit that certificated personnel may be dismissed for
15 unsatisfactory performance rather than simply incompetent performance. The amendment underscored
16 that the standard for satisfactory performance is not solely meeting technical qualifications for entry
17 into employment but performance evaluation and assessment must consider the certificated employees'
18 on-the-job performance with and distinctly factor in the degree to which children are learning toward
19 grade level standards of expected pupil achievement among other mandated criteria.

20 32. In 1999, the Stull Act was again amended by the enactment of Chapter 4, Statutes of
21 1999 (Assembly Bill 1 of the First Extraordinary Session—Villaraigosa, Strom-Martin, and Alquist) to
22 mandate that all applicable certificated personnel evaluations *also* include measures of pupil progress
23 toward state adopted academic content standards as measured by state adopted criterion-referenced
24 assessments.

25 33. AB 1X 1-Villaraigosa, *et al.* was the first bill introduced in the California Assembly
26 during the Special Session on Education Reform called by a new Governor at a time when California's
27 recently adopted Academic Content Standards were being lauded across the nation as being the most
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1 rigorous of all the states, yet actual comparative student performance on reading and math assessments
2 as reported by the Nation’s Report Card, also known as the National Assessment of Educational
3 Progress (NAEP) had ranked California at the bottom of the nation, including all the large urban states
4 and only ranking above states such as Louisiana and Mississippi, and the District of Columbia when it
5 came to actually demonstrating grade level competence in the subject matter. Accordingly, there was
6 appropriate concern about student progress toward academic performance goals but also concern
7 regarding the effectiveness of certificated personnel in leading the schools and teaching students in the
8 classroom.

9 34. AB 1X 1-Villaraigosa, *et al.* established the California Peer Assistance and Review
10 Program for Teachers, which enacted various voluntary provisions to address exemplary and sub-par
11 performance and to strongly encourage a cooperative relationship between the principal and teacher
12 with respect to peer assistance and review; and it enacted *a very notable mandate—the expansion of*
13 *the Stull Act “progress of pupils” factor in certificated staff performance evaluations* by adding the
14 requirement that pupil progress toward state adopted academic content standards based on state
15 adopted criterion referenced assessments be incorporated as an additional component factor of
16 paragraph (1) of subdivision (b) of Section 44662. In amending the statute, the Legislature specifically
17 chose to amend paragraph (1) and not paragraph (2) of Section 44662. Had it amended paragraph (2)
18 of subdivision (b) of Section 44662, the nature of the “evaluate and assess” mandate would have been
19 applicable to the review of an employee’s use of assessment data as an “instructional technique” or
20 “strategy” also known as pedagogical tactics of teaching, which can certainly be very important in
21 reviewing performance, for example, using students’ reading scores on an assessment to determine
22 how to adjust instruction, but the Legislature did not chose to mandate such pedagogical consideration
23 in the “evaluate and assess” mandate because the Legislature recognized that there is a more significant
24 value to the district and the state in the use of summative criterion referenced assessment data.

25 35. By enacting AB 1X-1 Villaraigosa, *et al.*, and amending paragraph (1) of subdivision
26 (b) relating to the “progress of pupils” and *not* paragraph (2) of subdivision (b) relating to the
27 “instructional technique” factor, the Legislature clearly understood the nature of the state adopted

1 criterion referenced assessments currently operational as being primarily summative in nature or in
2 other words a cumulative measure using assessment data as a gauge of student learning over the school
3 year and appropriately expanded the mandate in the placement of the distinct “progress of pupils”
4 factor in the employee performance evaluations.

5 36. State adopted criterion referenced assessments then currently operational and even
6 today are not technically designed to produce significant accuracy as formative data—to inform
7 ongoing or daily instruction and make course correction in instructional techniques—by design and
8 because the assessment results are returned back to the schools and the teachers much too late to help
9 affect instruction for the cohort of students who scores produced the data.

10 37. The state mandated Stull Act minimum evaluation rubric has distinct and explicit
11 factors. The Legislature specifically demonstrated that it intended that the progress of pupils toward
12 state adopted academic standards as measured by state adopted criterion referenced assessments be
13 included in the “progress of pupils” factor of the evaluation as complimentary and reinforcing to the
14 already mandated evidence of employee performance relating to the “progress of pupils” as measured
15 toward locally adopted standards of expected pupil achievement in paragraph (1) of subdivision (b) of
16 Section 44662 that had been in existence for nearly 30 years.

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

19 38. By enacting the Stull Act and its significant amendments over 40 years, five governors
20 and the legislature clearly understood and reinforced the state law requirement that school district
21 governing boards establish a uniform system of evaluation and assessment of the performance of
22 certificated personnel, including schools conducted or maintained by county superintendents of
23 education, and that a necessary and key component of every certificated employee evaluation be a
24 reasonable assessment of the certificated employee’s contribution to pupil progress toward established
25 standards of expected grade-level achievement.

26 39. The Stull Act mandates that all school districts establish standards of expected pupil
27 achievement at each grade level in each area of study, and adopt objective evaluation and assessment

1 guidelines for certificated personnel, which must include at a minimum the distinct factors of “pupil
2 progress”, “instructional techniques/strategies,” “adherence to curricular objectives,” “establishing
3 and maintaining a suitable learning environment” and “result from the Peer Assistance and Review
4 Program participation, if applicable.”

5 40. The legislature also codified intent specifying the establishment of guidelines that
6 provided for “objective evaluation and assessment” and expressed that the guidelines may be uniform
7 throughout the district, or for compelling reasons, be individually developed for territories or schools
8 within the district at the discretion of the governing board. Cal. Educ. Code §§ 44660, 44662.

9 41. The Stull Act explicitly mandates that the governing board of each school district
10 establish standards of expected pupil achievement at each grade level in each area of study. In
11 accordance with the Stull Act, the governing board of each school district must evaluate and assess
12 certificated employee performance as it reasonably relates to “[t]he progress of pupils toward the
13 standards established pursuant to Section 44662(a) and, if applicable, the state adopted academic
14 content standards as measured by state adopted criterion-referenced assessments.”

15 42. The Stull Act further mandates that the District superintendent or his or her designee
16 confer with any employee who receives an unsatisfactory performance evaluation, make specific
17 recommendations as to areas of improvement in the employee’s performance, and endeavor to assist
18 the employee in his or her performance. Cal. Educ. Code §§ 44664(b), 44665.

19 43. Beginning in 1999, the California Standards Tests (CSTs) adopted by the California
20 State Board of Education (“SBE”) pursuant to the provisions of Section 60640 *et seq.* were fully
21 operational in all the core content areas for every grade 2 to 11, inclusive, in the grade levels and
22 content areas mandated to be tested, and aligned to state adopted content standards as provided in
23 Section 60642.5. As such, at a minimum among several assessment instruments in the STAR
24 Program, the CSTs constitute state adopted criterion-referenced assessments for purpose of triggering
25 the expansion of the Stull Act “progress of pupils” evaluation factor mandate to require all applicable
26 certificated personnel evaluations to also include measures of the progress of pupils toward state
27 adopted academic content standards as measured by state adopted criterion-referenced assessments.

1 44. The LAUSD has established standards of expected pupil grade level achievement in
2 various content areas. Beginning around 1996, the District conducted a major review of district
3 adopted standards, and then as the State adopted standards came on line, the District has periodically
4 revisited its local standards of expected pupil achievement and modified the local standards and
5 provided certificated staff side-by-side comparisons with district adopted standards and state adopted
6 standards.

7 45. In addition, for 40 years the District and its certificated staff have used multiple locally
8 developed and approved formative, unit and summative measures of pupil progress, district approved
9 off-the shelf assessments, instructional certificated personnel-developed classroom assessments and
10 judgments of samples of student work to assign satisfactory and unsatisfactory ratings and letter grades
11 to millions of students to determine adequate student progress, unit credit, grade promotion and
12 whether or not millions of students met the District's graduation standards in a satisfactory manner to
13 receive a high school diploma.

14 46. STAR Program assessment data administered to all students in the District in grades 2
15 to 11, inclusive, in the specific grade levels and content areas specified by statute originally reported
16 with percentile rankings and later transformed on a phased-in basis to criterion referenced assessments
17 and state adopted criterion-referenced scores measuring the progress of pupils toward state adopted
18 academic content standards, and linked to student- and certificated-personnel data has been in the
19 possession of the District for over 10 years.

20 **C. The LAUSD Has Failed To Comply with the Stull Act.**

21 47. Pursuant to the California Constitution, the school district must ensure that children
22 have equitable access to a quality public education to preserve the fundamental right of basic
23 educational equality and opportunity to learn. This fundamental right can only be accessed when the
24 District and the Superintendent are taking positive action to ensure that the certificated employees of
25 the district are performing in a satisfactory matter as measured in part by how well students under their
26 charge are progressing toward the standards of expected pupil achievement at each grade level in each
27 area of study.

- promulgated a uniform system or any objective guidelines of mandatory certificated employee performance evaluation mandating a distinct “progress of pupils” factor that provides for such information to be a lawful factor of the employees’ performance evaluation, provided in writing to certificated employee, and part of the employees’ permanent record and trigger mandatory specific recommendations and resource allocation to assist the certificated employee in improving “pupil progress.”

51. Notwithstanding the three and a half decades that have elapsed since the California Legislature and the People of California established a process for local agencies to receive state reimbursement for new state mandated costs associated with amendments to law establishing new or expanded state requirements on local agencies, and the more recent promulgation of Parameters and Guidelines by the Commission on State Mandates for allowable Stull Act mandate reimbursement claims pursuant to AB 1X 1-Villaraigosa, et al., and the over \$20 million in annual claims filed and funded for over 700 other school districts in the state, the LAUSD has never sought reimbursement for allowable expenses associated with lawfully evaluating certificated employees.

52. The Superintendent and the District cannot seriously contend that LAUSD currently complies with the Stull Act for *all* of its certificated employees as required by law. As its public pronouncements and presentations make clear, it does not currently evaluate teachers based upon the learning progress of children in their charge.

53. For example, the Superintendent recently stated that, “I would argue that nobody has told me that the current system of evaluation, which is performance review, helps anybody. It is fundamentally useless. It does not actually help you get better at [your] work and it doesn’t tell you how well you’re doing.”

54. The Superintendent went on to state, “One would have to argue: ‘So ... there are schools where 3 percent of the students are proficient at math and 100 percent of the teachers are at the top rating performance.’ That doesn’t make sense to me whatsoever. And it doesn’t make sense because the rating performance does not actually help teachers get better.”

1 55. Moreover, on October 16, 2011, the Superintendent was quoted in the *Los Angeles*
2 *Times* admitting that the District in fact has been amassing data for a key metric of student
3 performance for the principals of District schools, presumably the CST data from the STAR Program,
4 as measured by improvement in scores on state adopted criterion-referenced assessments that measure
5 the progress of students toward meeting state adopted academic content standards. This measure not
6 only could serve as a key basis for a reasonable component of the pupil progress mandate in Stull Act-
7 compliant evaluations relative to District standards where there is direct harmony with grade level
8 academic content standards adopted by the state but in fact are a mandatory factor nevertheless, as the
9 obvious “progress of pupil” measure, “if applicable” toward state adopted academic content standards
10 as measured by state adopted criterion referenced assessments. However, when announcing his desire
11 to share this critical data with school principals for the first time, Superintendent Deasy confirmed that
12 teachers would not be evaluated based upon the existing student achievement data.

13 56. Petitioners are informed and believe, and thereon allege, that the District has possessed
14 data for over 10 years that allow it to identify certificated personnel, including principals and teachers,
15 whose annual cohorts of students have consistently performed below the District’s standards of
16 expected grade level pupil achievement, failed to graduate or earn a diploma, and also performed
17 below proficient or otherwise failed to evidence an academic year’s worth learning as measured by
18 state adopted criterion referenced assessments aligned to state adopted academic content standards.
19 Reasonable use of this data would constitute a key metric for evidence of student performance toward
20 the District’s standards and state adopted academic content standards as measured by state adopted
21 criterion-referenced assessments in the evaluation of certificated personnel.

22 57. Petitioners are further informed and believe that the District possesses student, teacher,
23 and principal level data that can be analyzed with various reasonable methodologies, including, but not
24 limited to, static, growth, value-added, aggregated and disaggregated methodologies, controlled for
25 race and ethnicity, gender, special needs and socio-economic status, as well as evaluated
26 longitudinally. The data can also be used to compare individual cohorts’ or multiple cohorts’ absolute
27 or average performance from one year to the next based on the observed progress of all similar
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1 students and the District's expectations for proficiency at each grade level that could serve as lawful
2 components of fully compliant Stull Act certificated employee evaluations.

3 58. Yet, notwithstanding the data available to it, the District has not undertaken the steps to
4 lawfully and reasonably include this information in evaluations of certificated personnel as applicable.
5 Complete and willful omission of all data on the progress of pupils in its entirety and thus a failure to
6 reasonably incorporate pupil progress in certificated personal performance and a standard of
7 satisfactory adult performance is not permissible under the law and is certainly not reasonable to the
8 children of the District.

9 59. Petitioners are informed and believe, and thereon allege, that the District also has not
10 attempted to use this information to provide systematically and in a uniform way specific
11 recommendations as to areas of improvement in the certificated employee's performance, to endeavor
12 to assist unsatisfactory certificated personnel until they improve their performance in educating of the
13 children of the District, or otherwise be annually evaluated until the unsatisfactory performance is
14 remedied or until the employee is separated from the district as required by Section 44664(b).

15 60. Because none of the certificated employees have ever been properly evaluated as
16 required by the Stull Act, the LAUSD may not grant consent as provided for in Section 44664(a)(3) to
17 evaluate certain certificated personnel as infrequently as once every five (5) years. Its grant of such
18 consent in its agreements with the UTLA and the AALA therefore is invalid.

19 61. Evaluations based upon evidence of progress of pupils toward the standards of expected
20 pupil achievement are not only mandated by the Stull Act, but are also necessary to secure the
21 children's fundamental right to basic educational equality and opportunity to learn in the public
22 schools by ensuring that the District is assigning effective certificated staff to all children across the
23 District in a constitutionally equitable manner. Thus, this basic information regarding whether
24 children are learning must be considered in determining the basis for a minimum satisfactory rating of
25 certificated employees' performance.

26 62. Although it could have performed Stull Act-compliant evaluations, the District
27 continues to fail in its obligations to its students. The District's continued noncompliance with the

1 Stull Act eliminates any hope that it can evaluate, identify, and either appropriately endeavor to assist,
2 mandate corrective action, or ultimately dismiss substandard certificated personnel who have
3 contributed to rates of educational attainment that are far below the objective grade level standard of
4 proficiency, as well as dismal learning rates—far less than one academic year—for students who start
5 the year below grade level, as measured by either the expectations of the District or the State. The end
6 result is that the children of Los Angeles are deprived of their Constitutional right to basic educational
7 equality and the opportunity to learn in public schools in the District. *See Serrano, supra*, 18 Cal. 3d at
8 765-66.

9 63. Most recently, the District, instead of instituting immediate compliance with the law
10 some forty years after passage of the Stull Act, embarked upon an experiment to begin to examine how
11 it might try to comply with the 40 year-old law (the “Pilot Program”). A pilot may have been
12 appropriate 39 or even 35 years ago, but not after decades of dereliction of duty and child neglect.
13 Even the Pilot Program as proposed does not comply with the Stull Act because there would be no
14 effect on current evaluation ratings for participating volunteer principals and teachers. Moreover, only
15 approximately 3 percent of the certificated personnel are participating in the Pilot Program. Thus, it
16 does not address the other 97 percent currently not in the Pilot Program. Moreover, even the
17 LAUSD’s own label for the Pilot Program, “Three-Year, Three-Phased Plan,” demonstrates that the
18 program fails to bring the LAUSD into immediate compliance with the Stull Act.

19 64. Because of the LAUSD’s years of non-compliance with the Stull Act, Petitioners have
20 demanded that LAUSD endeavor to comply with the Stull Act in its entirety as immediately as
21 practicable. Specifically, on October 26, 2011, Petitioners demanded that the LAUSD (a) comply with
22 the Stull Act by implementing a comprehensive program of evaluating certificated employees’
23 performance as it relates to specified mandated elements, including but not limited to, pupil progress
24 as it reasonably relates to the standards of expected pupil achievement at each grade level in each area
25 of study as established by the District and, if applicable, the state adopted academic content standards
26 as measured by state adopted criterion-referenced assessments; (b) refrain from entering into any
27 agreement with either the AALA or the UTLA that includes an evaluation system that does not fully
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1 comply with the Stull Act or that delays or otherwise prevents the District from implementing a
2 comprehensive program of evaluating certificated employees' performance as required by the Stull
3 Act; (c) immediately evaluate, in full compliance with the Stull Act, all applicable certificated
4 personnel regardless of tenure status; (d) immediately revoke its consent to evaluate certain certificated
5 personnel less frequently than every other year; and (e) confer with any employee who receives an
6 unsatisfactory performance evaluation, make specific recommendations as to areas of improvement in
7 the employee's performance, and endeavor to assist the employee in his or her performance, as
8 required by Education Code section 44664(b). The Superintendent and the District refused to respond.

9 **D. The Culpability of the AALA and the UTLA in the**
10 **District's Neglect of the Children In Its Charge.**

11 65. The LAUSD's failure to protect the children under the charge of the District by
12 conducting lawful evaluations of its certificated personnel is not surprising given the historical
13 opposition of groups of politically powerful adults: the administrators, represented by the AALA, and
14 the teachers, represented by the UTLA. Both the AALA and the UTLA have historically fought
15 against certificated personnel evaluations being tied in any way to student learning. The result is
16 decades during which prior LAUSD superintendents and school boards have entered into unlawful
17 collective bargaining contracts with these associations of adults that prevented compliance with the
18 statutory mandate of evaluating certificated staff based even in part on available evidence of whether
19 or not the children are learning.

20 66. Indeed, the 2009-2011 collective bargaining agreement (CBA) and, on information and
21 belief, the current one-year extension of the CBA between the AALA and the LAUSD does not allow
22 for administrators to be evaluated as mandated by the Stull Act regarding the progress of pupils toward
23 the standards established pursuant to Section 44662(a) and, if applicable, the state adopted academic
24 content standards as measured by state adopted criterion-referenced assessments.

25 67. Similarly, the 2008-2011 CBA between the LAUSD and the UTLA does not allow for
26 certificated staff to be evaluated as mandated by the Stull Act regarding the progress of pupils toward
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1 the standards established pursuant to Section 44662(a) and, if applicable, the state adopted academic
2 content standards as measured by state adopted criterion-referenced assessments.

3 68. Petitioners are informed and believe, and thereon allege, that the LAUSD has
4 tentatively accepted the high-level terms of the AALA's proposed new multi-year CBA beginning in
5 the 2012-2013 school year. Notwithstanding reports of tentative agreement for a soft three-year launch
6 of a pilot program that purports to takes steps *toward* Stull Act compliance, the reported outline of the
7 agreement reveals that the respondents do not intent to mandate that all applicable certificated
8 administrators and other non-instructional personnel represented by the AALA be evaluated regarding
9 all the mandated Stull Act measures, and specifically a measure of the progress of pupils toward the
10 standards established pursuant to Section 44662(a) and, if applicable, the state-adopted academic
11 content standards as measured by state adopted criterion-referenced assessments.

12 69. Although the proposed multi-year CBA between the LAUSD and the AALA has not yet
13 been ratified, Petitioners are informed and believe, and thereon allege, that a final deal is imminent.

14 70. Petitioners are further informed and believe, and thereon allege, that the LAUSD and
15 the UTLA are currently involved in negotiations over a new three-year CBA, which would continue
16 the District's forty-year track record of Stull Act non-compliance. Specifically, petitioners are
17 informed and believe, and thereon allege, that a new three-year CBA between the LAUSD and UTLA
18 would not mandate that certificated personnel represented by UTLA be reasonably evaluated based
19 upon the progress of pupils toward the standards established pursuant to Section 44662(a) and, if
20 applicable, the state adopted academic content standards as measured by state adopted criterion-
21 referenced assessments. Furthermore, the Superintendent was recently cited in the *Los Angeles Times*
22 as admitting that teachers will not be formally judged on existing student achievement data.

23 71. Although a new CBA between the LAUSD and the UTLA has not yet been finalized,
24 Petitioners are informed and believe, and thereon allege, that a deal is imminent.

25 72. Even the District's baby step toward compliance with the Stull Act, the Pilot Program,
26 has been resisted by the politically powerful AALA and UTLA. Indeed, although nearly 900
27 certificated administrators and teachers agreed to participate in the Pilot Program, both the AALA and
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1 the UTLA filed actions in the PERB against the LAUSD regarding the Pilot Program. Although it has
2 been reported that the AALA has since withdrawn its complaint, the hearing transcripts appear to
3 indicate the complaints filed by AALA and the UTLA were consolidated into one action. In short, the
4 actions pending in PERB allege the collective bargaining agreements and relationships between the
5 UTLA and the AALA, on the one hand, and the District, on the other, prohibited the solicitation of
6 teachers and administrators to participate in the Pilot Program. Now, the UTLA seeks to block the
7 Pilot Program, which itself is non-compliant with the Stull Act and sadly too little too late for the
8 millions of children who have attended schools in Los Angeles over the past forty years. In challenging
9 even a no-stakes experiment and attempt to explore options to evaluate certificated personnel based
10 upon the children's progress toward the established academic standards, each politically powerful
11 association of adults further demonstrated its callous disregard for the Constitutional rights of the
12 children of the LAUSD to basic education equality in the public schools.

13 73. Petitioners are informed and believe, and thereon allege, that neither AALA nor the
14 UTLA have agreed to allow the LAUSD to adopt a permanent evaluation program in compliance with
15 the Stull Act for all the certificated employees in the District immediately upon the execution of new
16 collective bargaining agreements.

17 74. It appears the AALA has recently only tentatively agreed to a collective bargaining
18 agreement which provides simply for a "reopener" that will permit the LAUSD to bargain with the
19 AALA for the ability to lawfully evaluate administrators as required to fully comply with the Stull Act.
20 However, even this reopener is not to take place until some date in the future. Therefore, while the
21 tentative agreement might have been seen as reasonable if reached in 1972 or 1973, it is not reasonable
22 and it is impermissible in 2011 or 2012.

23 75. As a result, the proposed pending CBA between the AALA and the LAUSD will not
24 comply with the Stull Act, as it will not base actual evaluations of any certificated personnel on student
25 progress toward the District's standards or student progress on state adopted academic content
26 standards as measured by state adopted criterion-referenced assessments. Instead, it will leave, once
27 again, for some future negotiation over a contract reopener in some unknown year down the road a day

1 when the children of Los Angeles can perhaps benefit from the protections of a law first enacted in
2 1971.

3 76. The prospects for Stull Act compliance being permitted under a new UTLA collective
4 bargaining agreement are at least as bleak. The UTLA contends in its action before PERB that the
5 current CBA does not permit the LAUSD to evaluate certificated personnel as required by the Stull
6 Act. The UTLA leadership apparently believes that it can enter collective bargaining agreements that
7 violate State law. Given the UTLA’s position with respect to even the Pilot Program, there is no
8 reason to believe that the UTLA will voluntarily agree to a Stull Act-compliant evaluation program as
9 it bargains its next collective bargaining agreement with the District. The UTLA’s forty years of
10 public opposition to complete compliance with the Stull Act as it relates to the question, “are the
11 students learning?” is hardly encouraging.

12 77. Thus, the LAUSD and the associations representing more than 40,000 certificated adult
13 staff are on the threshold of once again negotiating and executing illegal labor contracts, which will
14 prevent legally required evaluations of adults and operate to the detriment of the Petitioners and the
15 670,000 children of the District.

16 78. Without this Court’s intervention and judicial mandate, there is a strong likelihood that
17 the new collective bargaining agreements that the LAUSD is imminently going to negotiate and
18 execute with the AALA and the UTLA will continue to forbid evaluations of certificated personnel
19 that are fully compliant with the Stull Act. As such, there will be no lawful mechanism to lawfully
20 identify and distinguish satisfactory or unsatisfactory personnel, mandate corrective action, or make
21 the required specific recommendations nor to provide the mandated necessary help to the employee
22 return to satisfactory performance.

23 **E. The UTLA’s Obstructive Public Employment Relations Board Action.**

24 79. On May 25, 2011, the UTLA filed suit, as the charging party, against the LAUSD in the
25 Public Employment Relations Board. The case is currently pending before PERB as *United Teachers*
26 *of Los Angeles v. Los Angeles Unified School District*, Case No. LA-CE-5561-E (the “PERB Action”).
27

1 80. In relevant part, the UTLA alleges that on or about September 8, 2010, the LAUSD and
2 the UTLA commenced negotiations concerning the review and redesign of performance evaluation
3 methods and processes for certificated personnel. On or about November 15, 2010, the parties agreed
4 to establish a joint committee to make findings and recommendations in order to facilitate the
5 negotiation process. As of May 6, 2011, the joint committee had not made any recommendations and
6 the parties had not completed negotiations.

7 81. The UTLA further alleges in the PERB Action that on or about March 28, 2011, the
8 LAUSD informed the UTLA that the LAUSD had developed a “Three-Year, Three-Phased Plan” to
9 redesign and implement new evaluation procedures. On or about April 28, 2011, LAUSD sent a letter
10 to all certificated personnel represented by the UTLA, soliciting the employees’ participation with
11 “testing” the new evaluation procedures and identifying benefits that would, accrue to bargaining unit
12 members who agreed to participate.

13 82. The UTLA now complains that the LAUSD made these representations without having
14 negotiated with the UTLA, which constituted a refusal to bargain in good faith among other labor
15 violations.

16 83. The PERB Action suit seeks to continue the LAUSD’s non-compliance with the Stull
17 Act and continued violation of state law under the guise of “labor practices.”

18 **F. The Results of Non-Compliance by the LAUSD and Stonewalling**
19 **and Obstruction of Evaluations by the AALA and the UTLA.**

20 84. For decades, the LAUSD, the AALA, and the UTLA have resisted compliance and
21 continue to resist full compliance with the Stull Act. Although the LAUSD’s Pilot Program could
22 have been viewed as a step in the right direction four decades ago, it also fails to require 100 percent
23 immediate compliance with its certificated staff, when applicable, even though the District admits
24 existence and possession of reasonable measures of student progress. As a practical matter, the current
25 pilot approach does not guarantee time-certain compliance in the immediate future where data is
26 available and is therefore evidence of further delay and willful non-compliance.

1 85. From sponsoring several failed legislative attempts in the early 1970s to repeal this
2 statutory mandate, to its latest attempt to undermine the feeble effort of the District to move toward a
3 process of establishing a uniform system of compliant certificated employee evaluations, the UTLA
4 and its representatives have acted purposefully to promote collective bargaining agreements that shield
5 its membership from any responsibility for the actual educational outcomes of the students that are
6 assigned to the certificated employees they represent. The UTLA has treated the public school system
7 in Los Angeles as a taxpayer-funded jobs and entitlement program for adults, regardless of
8 probationary or permanent status, even if the employee’s performance would otherwise be determined
9 to be demonstrably unsatisfactory under any reasonable effort to evaluate and assess how well the
10 employee contributed to his or her pupils’ progress toward making progress toward the grade-level
11 standards of expected pupil achievement adopted by the district or the State.

12 86. The UTLA has not acted alone. At various times over the past four decades, the AALA
13 (and its predecessor associations) joined with the UTLA to resist statutes that require the adoption of a
14 uniform system of certificated personnel evaluation and assessment that include measures of student
15 learning and knowingly entered into CBAs that violated the Stull Act.

16 87. Most recently, the AALA attempted to join with certain representatives of the teachers
17 to crush any effort of the LAUSD to direct the development or adopt a legally compliant system of
18 evaluation and assessment of certificated employees in order to protect their own jobs from parental,
19 public, and taxpayer scrutiny. In doing this, the AALA representing the overwhelming majority of
20 adults responsible for evaluating certificated staff, has failed and unlawfully forced its membership to
21 pursue illegal demands, effectively forcing the membership to abdicate their responsibilities to parents,
22 students, and the residents of the LAUSD to enforce California education laws and the State
23 Constitution, which are meant to ensure that all students in the District receive the opportunity to learn
24 through a quality public education.

25 88. The result is a certificated employee review system that does not comply with the Stull
26 Act and that perpetuates a fraud on the community by enabling certificated employees to receive
27 satisfactory evaluation ratings regardless of whether or not their students are making progress toward
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1 the standards of expected pupil achievement adopted by the District or the state adopted academic
2 content standards.

3 89. With the tacit approval of the District’s boards and past superintendents that have
4 governed and managed the District over the last 40 years, the certificated personnel and their
5 evaluators and their employer lack accountability for ensuring the adults are focused on the primary
6 purpose of the institution: the education and progress of students toward expected standards of
7 achievement. The result has been a perversion of the evaluation system and a knowing effort to
8 deceive the public using educational jargon with specific meaning and definition in school
9 accountability report cards where between 83-95% of the certificated teachers are reported to be
10 evaluated by the certificated administrators as “highly qualified,” a term of art used to mean that the
11 employee is technically eligible for employment and not used as a measure of on-the-job performance
12 with children or any type of measure regarding the progress of the students toward expected standards
13 of achievement. In fact, data demonstrates that anywhere from 40-84% of the students are not even
14 proficient in English Language Arts or Math, and nearly 30 percent of 12th graders district-wide fail to
15 graduate within four years, not only because students drop out of school, but also because they are
16 credit deficient, another indicator of unsatisfactory pupil progress toward the District’s grade level
17 standards of expected achievement.

18 90. For example, the LAUSD’s own 2010-2011 “report cards” tell the following story for
19 the District as a whole:

- 20 • At the elementary school level, 95% of the teachers were rated as “highly qualified,”
21 which is a job eligibility standard and *not* a reflection of actual adult performance
22 working with children and of the children’s achievement during the year in which the
23 rating is reported, but 50% of the children tested were not proficient in English
24 Language Arts and 38% of the children tested were not proficient in Math;
- 25 • At the middle school level, 83% of the teachers were rated as “highly qualified,” but
26 56% of the children tested were not proficient in English Language Arts and 61% of the
27 children tested were not proficient in Math; and

- At the high school level, 89% of the teachers were rated as “highly qualified,” but 63% of the children tested were not proficient in English Language Arts, and 84% of the children tested were not proficient in Math.

91. The disconnect between the illegal certificated personnel evaluation system and actual student performance could not be more stark. Through its collective bargaining agreements with the AALA and the UTLA, the LAUSD boards of education and superintendents have over the years abandoned the law and their Constitutional obligation to the children of Los Angeles. They have allowed these adults to place their own self-serving concerns for working conditions, salaries and guarantees of permanent employment and promotions above the fundamental constitutional rights of the children, the most socioeconomically vulnerable of which are held hostage to assignments in low performing schools as measured by decile rankings on the State’s Academic Performance Index (“API”). The following statistics from 2010 establish this point:

- 34,725 students or 17 percent were enrolled in 71 LAUSD elementary schools ranked 1 out of 10 on the API (i.e., the worst performing 10% of schools statewide);
- 91,650 students or 35 percent were enrolled in 81 LAUSD middle schools ranked 1 out of 10 on the API; and
- 42,402 students or 31 percent were enrolled in 38 LAUSD high schools ranked 1 out of 10 on the API.

92. Collectively, these 168,777 students – all assigned to rank 1 API schools – represent 28 percent (or well over a quarter) of the District’s students. To be sure, these children are stuck in schools and classrooms with chronically substandard certificated school leadership and instructional personnel who are protected by illegal evaluations and collective bargaining agreements that violate California law. Notably, others living in the same area have left their district-assigned school to find a better option, either through public education with transportation costs at their expense in public Charter schools or at the cost of transportation and tuition to attend a private school.

93. In the forty years since the enactment of the Stull Act, the LAUSD governing board and superintendents have acquiesced to the demands of the politically powerful certificated employee

1 associations and unlawfully executed collective bargaining agreements that provide for satisfactory
2 ratings in certificated personnel evaluations that never take into account the actual progress toward
3 meeting grade level expected standards of achievement adopted by the District or the State for the
4 pupils entrusted to them by the students' parents and guardians, and the State of California through
5 compulsory education statutes.

6 94. The tragedy of this abdication of responsibility is further highlighted by the fact that
7 various researchers have demonstrated that there are multiple measures of pupil progress and multiple
8 methodologies available to link pupil progress to specific certificated personnel for the overwhelming
9 majority of certificated instructional staff and school site leadership in the LAUSD. Thus, there are no
10 technical barriers to the LAUSD's good faith reasonable efforts to comply with the Stull Act in the
11 District beginning immediately and certainly no later than beginning with the 2012-13 school-year.

12 95. However, as it stands, no LAUSD certificated principals or teachers evaluate or are
13 evaluated, even in part, based upon student achievement as required by State law. As a result,
14 hundreds of thousands of students in the District do not progress well from year to year, and either are
15 held hostage to an underperforming district assigned school or must incur greater a loss of time and
16 greater education expenses by moving to a more distant public charter school (if they can overcome a
17 waiting list and a lottery) or must move to a private school. Moreover, the taxpaying parents and the
18 children of the LAUSD cannot be reasonably assured that they are able to access the basic educational
19 opportunities as other students enrolled in the District or other California public schools, which is a
20 fundamental right guaranteed under the California Constitution to the resident school-aged children
21 living within the boundaries of the LAUSD. Under all such scenarios, the end result is irreparable
22 harm to the students.

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

2 **(Against Respondents LAUSD, Deasy, Garcia,**

3 **Galatzan, Kayser, LaMotte, Martinez, Vladovic, and Zimmer)**

4 96. Petitioners repeat and reallege the allegations contained in paragraphs 1 through 95,
5 above, as though set forth in full herein.

6 97. Upon signing Chapter 361, Statutes of 1971 (Assembly Bill 293-Stull) on July 20, 1971,
7 the Governor and the California Legislature enacted the original Stull Act, which addresses various
8 issues of satisfactory and unsatisfactory certificated personnel performance and unambiguously
9 mandates that all school districts adopt standards of expected pupil achievement and periodically
10 evaluate all applicable certificated employees as it reasonably relates to the progress of pupils toward
11 the standards of expected pupil achievement at each grade level in each area of study as established by
12 the district. Other mandated components were included in the original act and others added later,
13 including the assessments of the certificated employee’s appropriate use of “instructional techniques
14 and strategies,” and “adherence to curricular objectives,” and later still, the legislature *added new state*
15 *adopted* measures of pupil progress to the requirement. Far from diminishing in anyway, subsequent
16 amendments to the Stull Act signed into law by the next four Governors preserved and strengthened
17 the original language pertaining to state mandated inclusion of pupil progress as a required and
18 necessary component in the lawful evaluation of certificated personnel.

19 98. The Stull Act requires further that the governing board of each school district evaluate
20 and assess certificated employee performance as it reasonably relates to the progress of pupils toward
21 the standards adopted by the district locally. The “evaluate and assess” aspect of the Stull Act was
22 expanded in 1999 to include, if applicable, pupil progress toward the state adopted academic content
23 standards as measured by tests or other assessments that measure how well students perform against an
24 objective criterion – as opposed to how students perform compared to other students. In California,
25 such tests are commonly referred to as “state adopted criterion-referenced assessments.”

26 99. As students, parents of students, and tax-paying citizens, Petitioners have a beneficial
27 interest in improving the quality of the system of public education in the LAUSD. As students, parents

1 of students, and tax-paying citizens, Petitioners also have a clear, present, and legal right to request the
2 court to compel the LAUSD's compliance with the Stull Act.

3 100. Respondents Deasy, LAUSD, Garcia, Galatzan, Kayser, LaMotte, Martinez, Vladovic,
4 and Zimmer have a clear, present, and ministerial legal duty to comply with the Stull Act, which is
5 codified as Section 44660 *et seq.* These respondents also have a present legal duty and present ability
6 to perform their legal duty and comply with the Stull Act.

7 101. Respondents Deasy, LAUSD, Garcia, Galatzan, Kayser, LaMotte, Martinez, Vladovic,
8 and Zimmer are not in compliance with the Stull Act.

9 102. In the forty years since the California Legislature enacted the Stull Act, the LAUSD has
10 never evaluated its certificated staff as to how their performance relates in any way to (a) the progress
11 of pupils toward the standards established pursuant to Section 44662(a) and, if applicable, (b) the state
12 adopted academic content standards as measured by state adopted criterion-referenced assessments.

13 103. In the forty years since the California Legislature enacted the Stull Act, neither the
14 LAUSD nor the Superintendent have conferred with an employee who was not performing his or her
15 duties in a satisfactory manner according to the standards prescribed by the governing board pursuant
16 to Section 44662(a), made specific recommendations as to areas of improvement in the employee's
17 performance, or endeavored to assist the employee in his or her performance in order to achieve a
18 higher level of performance tied to the rate of progress toward meeting established standards of
19 expected pupil achievement at each grade level in each area of study as required by the Stull Act.

20 104. In the forty years since the California Legislature enacted the Stull Act, the LAUSD has
21 never reduced such legally compliant evaluations to writing nor added such evaluations to part of the
22 certificated employees' permanent records.

23 105. In the decades since the California Legislature enacted amendments to the Stull Act that
24 would permit application for reimbursement or costs above compliance with the original statute, the
25 LAUSD has never sought reimbursement for its expenses associated with marginal costs with the
26 expanded mandates to evaluate certificated employees' performance, and most notably the addition of
27 state standards related measure of pupil progress as enacted by AB 1X 1 (Villaraigosa et al.), which

1 expanded the Stull Act mandate to establish as additional standards of expected pupil progress at each
2 grade level, as it pertains to state adopted academic standards, and as measured by State adopted
3 criterion-referenced assessments, when applicable.

4 106. Here, Respondents Deasy, LAUSD, Garcia, Galatzan, Kayser, LaMotte, Martinez,
5 Vladovic, and Zimmer cannot seriously contend that the District is in compliance with the Stull Act.

6 107. Because of the LAUSD's years of non-compliance with the Stull Act, Petitioners have
7 demanded that the LAUSD comply with the Stull Act in its entirety. Specifically, on October 26,
8 2011, Petitioners sent a letter to Superintendent Deasy, with a copy to all members of the Board of
9 Education, demanding that the LAUSD (a) comply with the Stull Act by implementing a
10 comprehensive program of evaluating certificated employees' performance as its relates to specified
11 mandated elements, including but not limited to, pupil progress as its reasonably relates to the
12 standards of expected pupil achievement at each grade level in each area of study as established by the
13 District and, if applicable, the state adopted academic content standards as measured by state adopted
14 criterion-referenced assessments; (b) refrain from entering into any agreement with either the AALA or
15 the UTLA that includes an evaluation system that does not fully comply with the Stull Act or that
16 delays or otherwise prevents the District from implementing a comprehensive program of evaluating
17 certificated employees' performance as required by the Stull Act; (c) immediately evaluate, in full
18 compliance with the Stull Act, *all* applicable certificated personnel regardless of tenure status; (d)
19 immediately revoke its consent to evaluate certain certificated personnel less frequently than every
20 other year; and (e) confer with any employee who receives an unsatisfactory performance evaluation,
21 make specific recommendations as to areas of improvement in the employee's performance, and
22 endeavor to assist the employee in his or her performance, as required by Education Code section
23 44664(b).

24 108. The LAUSD refuses to comply with the Stull Act as required by California law and as
25 requested by Petitioners.

26 109. Petitioners have no other plain, speedy, or adequate legal remedy to compel
27 Respondents to perform their mandatory legal duties as alleged above. There are no administrative
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1 remedies to exhaust. Only in this proceeding may Petitioners receive the entire remedy due to them.
2 These children do not have a shelf life.

3 **SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF**

4 **(Against Defendants LAUSD, AALA, and UTLA)**

5 110. Petitioners repeat and reallege the allegations contained in paragraphs 1 through 95,
6 above, as though set forth in full herein.

7 111. The 2009-2011 CBA and, on information and belief, the current one-year extension of
8 the CBA between the AALA and the LAUSD does not allow for administrators to be evaluated
9 regarding the progress of pupils toward the standards established pursuant to Section 44662(a) and, if
10 applicable, the state adopted academic content standards as measured by state adopted criterion-
11 referenced assessments.

12 112. Similarly, the 2008-2011 CBA between the LAUSD and the UTLA does not allow for
13 teachers to be evaluated regarding the progress of pupils toward the standards established pursuant to
14 Section 44662(a) and, if applicable, the state adopted academic content standards as measured by state
15 adopted criterion-referenced assessments.

16 113. Petitioners are informed and believe, and thereon allege, that the LAUSD has
17 tentatively accepted the terms of the AALA's proposed new multi-year CBA beginning in the 2012-
18 2013 school year. Notwithstanding reports of tentative agreement for a soft three-year launch of a
19 pilot program that purports to takes steps *toward* Stull Act compliance, this agreement does not
20 mandate that certificated administrators and other non-instructional personnel represented by the
21 AALA be evaluated regarding all the mandated Stull Act measures, and specifically a measure of the
22 progress of pupils toward the standards established pursuant to Section 44662(a) and, if applicable, the
23 state-adopted academic content standards as measured by state adopted criterion-referenced
24 assessments.

25 114. Although the proposed multi-year CBA between the LAUSD and the AALA has not yet
26 been ratified, Petitioners are informed and believe, and thereon allege, that a deal is imminent.

1 115. Petitioners are further informed and believe, and thereon allege, that the LAUSD and
2 the UTLA are currently involved in secret negotiations over a new three-year CBA, which would
3 continue the District's forty-year track record of Stull Act non-compliance. Specifically, petitioners
4 are informed and believe, and thereon allege, that a new three-year CBA between the LAUSD and
5 UTLA would not mandate that certificated personnel be evaluated based upon the progress of pupils
6 toward the standards established pursuant to Section 44662(a) and, if applicable, the state adopted
7 academic content standards as measured by state adopted criterion-referenced assessments.

8 116. Although a new CBA between the LAUSD and the UTLA has not yet been finalized,
9 Petitioners are informed and believe, and thereon allege, that a deal is imminent.

10 117. Based upon the foregoing, both the current and proposed CBAs of the AALA and the
11 UTLA violate the Stull Act by preventing the LAUSD and the Superintendent from complying with
12 the Stull Act now and in the future.

13 118. An actual controversy has emerged relating to the legal rights and duties of the
14 respective parties under these CBAs.

15 119. Petitioners desire a declaration that these CBAs violate the Stull Act and are therefore
16 illegal as a matter of law.

17 **THIRD CAUSE OF ACTION FOR INJUNCTIVE RELIEF**

18 **(Against Defendants LAUSD, AALA, and UTLA)**

19 120. Petitioners repeat and reallege the allegations contained in paragraphs 1 through 95,
20 above, as though set forth in full herein.

21 121. The current and proposed terms of the CBAs between the LAUSD and the AALA
22 prohibit the LAUSD from immediately implementing complete certificated employee evaluations for
23 certificated administrators and other non-instructional personnel as required by the Stull Act. As such,
24 these agreements are illegal as a matter of law.

25 122. The current and proposed terms of the CBAs between the LAUSD and the UTLA
26 prohibit the LAUSD from implementing certificated employee evaluations for all teachers and other
27

1 instructional and non-instructional certificated employees represented by the UTLA as required by the
2 Stull Act. As such, these agreements are illegal as a matter of law.

3 123. If not enjoined by order of this Court, the LAUSD and the AALA and the UTLA will
4 continue to enforce illegal CBAs and/or negotiate extensions to these CBA or execute new CBAs that
5 also violate California law, and Petitioners will suffer irreparable injury because the LAUSD will not
6 implement certificated employee evaluations for certificated personnel, including instructional and
7 non-instructional certificated employees represented by the AALA and the UTLA as required by the
8 Stull Act.

9 124. Petitioners do not have a plain, speedy and adequate remedy in the ordinary course of
10 law.

11 **FOURTH CAUSE OF ACTION FOR WRIT OF PROHIBITION**

12 **(Against Respondent PERB)**

13 125. Petitioners repeat and reallege the allegations contained in paragraphs 1 through 95,
14 above, as though set forth in full herein.

15 126. A writ of prohibition “arrests the proceedings of any tribunal, corporation, board, or
16 person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction
17 of such tribunal, corporation, board, or person.”

18 127. PERB is an administrative agency charged with exercising constitutionally conferred
19 judicial functions.

20 128. PERB’s duties are enumerated and circumscribed by California Government Code
21 section 3500 *et seq.*

22 129. PERB lacks the authority and jurisdiction to assess the substantive compliance with the
23 Stull Act of any collective bargaining agreement, including any such agreement entered into between
24 the LAUSD and the AALA or the UTLA.

25 130. PERB lacks jurisdiction over the Petitioners to adjudicate the fundamental rights of
26 children who reside in LAUSD school attendance zones and protect students’ opportunity to learn and
27 basic education equality guaranteed by the California Constitution.

1 131. The PERB Action is pending. It seeks to continue the LAUSD’s non-compliance with
2 the key measure in the Stull Act rubric that is necessary to use in evaluating the performance of
3 certificated personnel toward ensuring the fundamental right, under the guise of alleged “unfair labor
4 practices.” PERB has issued a Complaint against the LAUSD based upon the claims asserted by the
5 AALA and the UTLA. The direct effect of adjudication in favor of the UTLA in the PERB Action as
6 requested by the UTLA would be to give the color of law to an illegal CBA, which is impermissible
7 because it prevents full implementation of the Stull Act, as required by California law and as
8 demanded by Petitioners herein.

9 132. No decision by PERB could remedy the illegality of the underlying CBAs that the
10 LAUSD has entered into with the AALA and the UTLA. To the contrary, PERB has issued a
11 complaint against the LAUSD to block the Pilot Program, which purports to take a step *toward*
12 compliance with the Stull Act. PERB should be enjoined from sanctioning or perpetrating a violation
13 of California law.

14 133. Because the central issue to the PERB Action and the pending action is based upon the
15 nature and application of the Stull Act, any decision by PERB is likely to be dramatically affected by
16 the relief sought in the pending action. There also exists a multiplicity of proceedings that is likely to
17 produce inconsistent results.

18 **PRAYER FOR RELIEF**

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

20 1. A writ of mandate or other appropriate writ, order or injunction commanding the
21 LAUSD to immediately comply with California Education Code Section 44660 *et seq.*, by
22 implementing a comprehensive system of evaluating applicable certificated employees’ performance
23 as it relates to specified mandated elements, including, but not limited to, pupil progress as it
24 reasonably relates to the standards of expected pupil achievement at each grade level in each area of
25 study as established by the District and, if applicable, the state adopted academic content standards as
26 measured by state adopted criterion-referenced assessments; to immediately revoke its consent to
27 evaluate certificated personnel who have been employed at least 10 years with the District less

1 frequently than every other year; and confer with any employee who receives an unsatisfactory
2 performance evaluation, make specific recommendations as to areas of improvement in the employee's
3 performance, and endeavor to assist the employee in his or her performance;

4 2. A declaration confirming that the current and proposed CBAs between the AALA and
5 the LAUSD and the UTLA and the LAUSD, respectively, violate the Stull Act in that each CBA
6 currently does not allow for proper certificated employee evaluations and prevents the assurance of the
7 LAUSD's full compliance in the future for certificated personnel, as applicable;

8 3. Injunctive relief in the form of an order requiring the AALA to cease and desist from
9 bargaining for and/or insisting to impasse in bargaining for an evaluation system that does not include
10 a component measure of applicable certificated employees' performance as it relates to student
11 progress toward the District standards and the state adopted academic content standards as measured
12 by state adopted criterion-reference assessment in a reasonable manner;

13 4. Injunctive relief in the form of an order requiring the UTLA to cease and desist from
14 bargaining for and/or insisting to impasse in bargaining for an evaluation system that does not include
15 a component measure of applicable certificated employees' performance as it relates to student
16 progress toward the District standards and the state adopted academic content standards as measured
17 by state adopted criterion-referenced assessment's in a reasonable manner;

18 5. Injunctive relief in the form of an order preventing the AALA and the LAUSD, the
19 Superintendent, and the Board from entering into any extension or new CBA that does not fully
20 comply with the Stull Act or that delays or otherwise prevents the LAUSD from implementing a
21 comprehensive system of evaluating applicable certificated employees' performance as required by the
22 Stull Act;

23 6. Injunctive relief in the form of an order preventing the UTLA and the LAUSD, the
24 Superintendent, and the Board from entering into any extension or new collective bargaining
25 agreement that does not fully comply with the Stull Act or that delays or otherwise prevents the
26 LAUSD from immediately implementing a comprehensive system of evaluating applicable certificated
27 employees' performance as required by the Stull Act;

1 7. A writ of prohibition or other appropriate writ, order or injunction staying the action
2 currently pending before PERB as *United Teachers of Los Angeles v. Los Angeles Unified School*
3 *District*, Case No. LA-CE-5561-E, pending the outcome of this case;

4 8. For all costs of bringing this suit; and

5 9. For attorney fees under California Code of Civil Procedure section 1021.5.

6 Dated: October 31, 2011

BARNES & THORNBURG LLP

R.D. Kirwan
Scott J. Witlin
Levi W. Heath
Devin Stone

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10
11 By _____
12 Scott J. Witlin
13 Attorneys for Petitioners and Plaintiffs

VERIFICATION

I, the undersigned, do hereby declare as follows:

I am one of the petitioners in this action. I have read the above Verified Petition for Writ of Mandate and Prohibition; Verified Complaint for Injunctive and Declaratory Relief and know its contents. The facts alleged in the petition are true of my own personal knowledge, except as to the matters which are therein stated 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 31st day of October, 2011 in Los Angeles, California.

By: _____

Alice Callaghan