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

13 ELIEZER WILLIAMS, et al.,) Case No. 312 236
14)
15 Plaintiffs,) Hearing Date: October 16, 2000
16)
17 vs.) Time: 9:00 A.M.
18)
19 STATE OF CALIFORNIA, DELAINE) Department: 414
20 EASTIN, State Superintendent)
21 Of Public Instruction, STATE) Judge: Hon. Peter J. Busch
22 DEPARTMENT OF EDUCATION, STATE)
23 BOARD OF EDUCATION,)
24)
25 Defendants.)
26)
27)
28)

29 **MEMORANDUM OF POINTS AND AUTHORITIES**
30 **IN SUPPORT OF DEMURRER OF DEFENDANT STATE OF CALIFORNIA**
31 **TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

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1 prevent the destruction of California's historic system of local
2 school districts, adapted to local conditions, and operating
3 under local control:

4
5 Of course, the Constitution does not prohibit all
6 disparities in educational quality or service. Despite
7 extensive State regulation and standardization, the
8 experience offered by our vast and diverse public
9 school system undoubtedly differs to a considerable
10 degree among districts, schools, and individual
11 students. These distinctions arise from inevitable
12 variances in local programs, philosophies, and
13 conditions. "[A] requirement that [the State] provide
14 [strictly] 'equal' educational opportunities would thus
15 seem to present an entirely unworkable standard
16 requiring impossible measurements and comparisons.
17 . . ." *Hendrick Hudson Dist. Bd. Of Ed. v. Rowley*
18 (1982) 458 U.S. 176, 198. Moreover, principles of
19 equal protection have never required the State to
20 remedy all ills or eliminate all variances in service.

21
22 Accordingly, the California Constitution does not
23 guarantee uniformity . . . for its own sake. . . . In
24 an uncertain future, local districts, faced with
25 mounting fiscal pressures, may be forced to seek
26 creative ways to gain maximum educational benefit from
27 limited resources. . . . An individual district's
28 efforts in this regard are entitled to considerable
deference.

18
19 . . . A finding of constitutional disparity
20 depends on the individual facts. **Unless the actual
21 quality of the district's program, viewed as a whole,
22 falls fundamentally below prevailing statewide
23 standards, no constitutional violation occurs.**

24
25 4 Cal.4th at 686-87 (emphasis added).

26
27 Under Butt, plaintiffs could make out a constitutional
28 violation only if they alleged and proved that the "actual
quality" of the educational program of a given district, "viewed
as a whole," fell "fundamentally" below prevailing statewide
standards, after giving effect to the deference constitutionally

1 required for "local programs, philosophies, and conditions."
2 Perhaps understandably, plaintiffs do not even attempt to meet
3 this test. They make no allegations whatever going to the
4 educational program of any district "viewed as a whole." They do
5 not allege what the "prevailing statewide standard" is, much less
6 that the educational program of any particular district, viewed
7 as a whole, falls "fundamentally below" that prevailing standard.
8 They devote no attention to "local programs, philosophies, and
9 conditions." Plaintiffs thus in effect concede that they cannot
10 satisfy the Butt test.

11 Instead, they adopt a different tack -- a tack that has
12 no sanction in Butt nor in any other case. Plaintiffs' lengthy
13 complaint is a laundry list of highly specific problems, some
14 serious and some trivial, that supposedly exist at a small
15 fraction of schools (not districts) in California. FAC 25-62.
16 Plaintiffs then allege (mistakenly) that these problems are not
17 addressed by existing state laws and regulations; they ask for an
18 order that the State be required to issue and enforce standards
19 concerning them. FAC 67-69. Plaintiffs are utterly silent about
20 the content of the standards they wish the Court to impose. They
21 are equally silent about what order they want the Court to make
22 so that the State will "adequately enforce" these standards,
23 whatever they may be.

24 Plaintiffs allege at length that some California
25 schools have problems. With 8,563 schools, and nearly 6 million
26 pupils, it could hardly be otherwise. Working to remedy any
27 problems are the Governor, the Legislature, other state
28 departments and offices, and thousands of school administrators,

1 teachers, and staff throughout the State. Solutions are not
2 simple, and if a magic wand existed that would fix all problems
3 at once, someone would already have waved it.

4 The ultimate question for the Court will be whether
5 there is a viable lawsuit here. A viable lawsuit requires more
6 than a plaintiff who identifies problems (even real problems) and
7 alleges that the State has not done enough to solve them. Nor
8 may a lawsuit be used simply to obtain an abstract or theoretical
9 ruling that some course of conduct has infringed a legal or
10 constitutional norm. Rather, a viable lawsuit requires a
11 concrete set of facts, a legal standard that a court can define,
12 interpret and apply, and at least some prospect that application
13 of that legal standard to those specific facts will yield a
14 judgment that can remedy whatever violations are found. Pacific
15 Legal Foundation v. California Coastal Comm'n, 33 Cal. 3d 158,
16 170-71 (1982).

17 The State is skeptical that this lawsuit will ever pass
18 that test and prove to be justiciable. But for present purposes
19 that does not matter. The State does not now seek an order
20 dismissing this lawsuit for all time. It seeks only an order
21 that before everyone wastes massive time and money on pleadings,
22 motions, and discovery, plaintiffs should do the things that will
23 determine whether there is really a lawsuit here or whether the
24 filing of this action was primarily a political and public
25 relations exercise.

26 First. Plaintiffs should be required to specify what
27 precisely they contend the State has done wrong, and what
28 precisely they contend it should be required to do in the future.

1 They say that the State has no standards addressing the issues
2 they raise. As discussed below, the Court can take judicial
3 notice, based on statutes and regulations, that this is simply
4 not so. So the real questions are: Of the standards contained
5 in existing statutes and regulations, which ones do plaintiffs
6 contend are unconstitutionally or illegally deficient? What
7 standards do plaintiffs contend are constitutionally or legally
8 required? What precisely do plaintiffs contend the law or the
9 Constitution requires the State to do that it is not now doing?
10 Until plaintiffs specify their contentions, it is impossible to
11 tell if this case presents a justiciable controversy or is merely
12 a dispute about policy.

13 Second. Plaintiffs should be required to exhaust the
14 administrative remedies they undoubtedly possess, and which they
15 actually invoked in May -- only to abort the administrative
16 process when it became clear that it might reveal that many of
17 plaintiffs' contentions were unfounded. Plaintiffs obviously
18 would prefer a massive lawsuit to series of administrative
19 solutions. But the Court should not.

20
21 **II. THE STATE'S DEMURRER TO THE FIRST AMENDED COMPLAINT FOR**
22 **UNCERTAINTY SHOULD BE SUSTAINED, WITH LEAVE GIVEN TO**
23 **PLAINTIFFS TO AMEND TO EXPLAIN WHAT STATE STANDARDS**
24 **THEY CONTEND ARE UNCONSTITUTIONALLY DEFICIENT, AND WHY.**

25 C.C.P. § 430.10 provides for a special demurrer on the
26 ground of uncertainty. Such a demurrer should be sustained
27 unless the complaint is "sufficiently clear to apprise the
28 defendant of the issues that must be met." Merlino v. West Coast
Macaroni Mfg. Co., 90 Cal. App. 2d 106, 108 (1949). "Uncertainty
is the broad ground that covers any defective statement leaving

1 the cause of action or any part of it unclear." 5 WITKIN,
2 CALIFORNIA PROCEDURE, PLEADING § 927 at 386 (4th Ed. 1997). Here, the
3 First Amended Complaint, read in the light of statutes and
4 regulations of which the Court must take judicial notice, Evid.
5 Code § 451(a)-(b), utterly fails to make clear what issues
6 plaintiffs actually intend to raise.

7 The First Amended Complaint gives the impression that
8 the various problems plaintiffs allege have never been addressed
9 in any way by the State. In fact, contrary to plaintiffs'
10 allegations, California statutes and regulations provide specific
11 state standards in each of the areas that plaintiffs address.
12 Accordingly, if there is a justiciable controversy here, it is
13 not because there are no state standards. It is because
14 plaintiffs are in some way dissatisfied with existing standards
15 or with the manner in which those standards are enforced. But
16 plaintiffs' complaint nowhere specifies plaintiffs' real
17 grievances. Accordingly the State has no way of gleaning from
18 plaintiffs' complaint the issues it must actually meet.

19 Each of the three broad areas about which plaintiffs
20 complain -- teachers, textbooks, and facilities -- is dealt with
21 separately below.

22
23 A. Teachers

24 Plaintiffs' most serious concern appears to be the
25 presence of "uncredentialed" teachers in California public
26 schools. FAC 58:8. In fact, there are no "uncredentialed"
27 teachers in California public schools. Rather, the statutes and
28 regulations provide for many different types of teaching

1 credentials, applicable to the differing situations which schools
2 and districts face. See generally Cal. Educ. Code §§ 44200-405.
3 Credentials are issued by the Commission on Teacher Credentialing
4 ("the Commission"), to which the State has granted the specific
5 authority to establish professional standards, assessments, and
6 examinations for entry and advancement in the education
7 profession. Cal. Educ. Code § 44225(a).

8 A teacher who has completed specified course work in
9 education and received a recommendation from a California Teacher
10 Preparation Institution is eligible for the "Professional Clear
11 Credential." Cal. Educ. Code § 44259(c). This credential is
12 valid for five years, subject to renewal upon completion of
13 continuing education requirements, and comes in two varieties --
14 a "Multiple Subject Teaching Credential," which authorizes the
15 holder to teach all subjects in self-contained classrooms, such
16 as those in most elementary schools; and a "Single Subject
17 Teaching Credential," which authorizes the holder to teach
18 specific subjects in departmentalized classes, such as those in
19 most middle and high schools. Cal. Educ. Code §§ 44251(b)(3),
20 44256(a)-(b), 44258, 44277(f).

21 The Commission also issues "Preliminary Credentials" in
22 each category to teachers who have completed some, but not all of
23 the requirements for a Professional Clear Credential. Cal. Educ.
24 Code § 44259(b). A Preliminary Credential is issued for a
25 maximum of five years, within which period the teacher must
26 complete the requirements for a Professional Clear Credential.
27 Cal. Educ. Code § 44251(b)(2), 44259(b). University Internship
28 Credentials and District Internship Credentials are also

1 available for teachers enrolled in Commission-approved Teacher
2 Preparation Programs offered either by accredited Teacher
3 Preparation Institutions or by local school districts. Cal.
4 Educ. Code §§ 44321, 44450-67, 44325-29, 44830.3.

5 Finally, a school district may request that the
6 Commission issue an "Emergency Permit," allowing the district to
7 employ a teacher who does not possess one of the other
8 credentials. Cal. Educ. Code §§ 44300-02; Cal. Code Reg. §§
9 80023.1-80023.2. A district requesting that the Commission issue
10 one or more emergency permits must submit a "Declaration of Need
11 for Fully Qualified Educators" to the Commission, and must
12 certify that the district has made a diligent search for, but has
13 been unable to recruit, a sufficient number of certified
14 teachers. Cal. Educ. Code § 44300(a)(3)(B); Cal. Code Reg. §§
15 80023.2(d), 80026.²

16 In 1996, the State adopted the Class Size Reduction
17 Program, which had as its goal the reduction of class size in
18 kindergarten and grades 1-3 to 20 pupils per teacher. Cal. Educ.
19 Code § 52120 et seq. Reducing class size, of course, requires
20 more teachers for the same number of pupils; moreover, adoption
21 of the Class Size Reduction Program happened to coincide with a
22 significant increase in enrollment in California schools,
23 especially inner city schools, and with a nationwide shortage of
24 teachers. The State recognized that in the absence of remedial
25 measures these conditions would produce a large increase in the

26 ² The Declaration must be adopted by the governing board of
27 the district at a regularly scheduled meeting, and may not be
28 part of the consent agenda. Id. Public awareness and public
input as to such resolutions is thus provided for.

1 proportion of teachers teaching on emergency credentials, and
2 that this was undesirable. The State accordingly enacted
3 remedial and corrective measures.

4 First, starting in 1998, the State prohibited the
5 issuance of emergency credentials for more than five one-year
6 periods. Cal. Educ. Code § 44251(c). Thus, all those teaching
7 on emergency credentials must now enroll in the appropriate
8 courses and acquire non-emergency credentials within five years,
9 Cal. Educ. Code § 44300(f), and an emergency credential becomes
10 much more analogous to the long-established Preliminary
11 Credential: that is, it permits teachers to teach while
12 undergoing teacher preparation, but ensures that all teachers
13 promptly obtain clear credentials.

14 Second, the State enacted the California Pre-Internship
15 Teaching Program. Cal. Educ. Code § 44305. Under that program,
16 funds are provided to assist teachers enrolling in a district- or
17 university-run teaching internship or other teaching credential
18 program, thus enabling them to complete the requirements for
19 clear credentials. Id. All the larger California districts have
20 elected to participate in this program, which the State intends
21 will be fully funded statewide by 2002. Cal. Educ. Code §
22 44300(b)(2). Full funding of the program will eliminate the need
23 for emergency teaching credentials except in remote areas. Cal.
24 Educ. Code § 44300(b)(1)-(3).

25 Third, the State has adopted a broad range of
26 additional initiatives designed to reduce the teacher shortage.
27 It has enacted legislation making it easier for out-of-state
28 teachers to teach in California, sought to increase enrollment in

1 teacher preparation programs run by the University of California
2 and the California State University System, provided assistance
3 for beginning teachers, allowed for off-campus teacher
4 preparation programs, explored alternative credentialing methods,
5 and otherwise tried to help beginning teachers, educate teachers
6 already in service, and increase the supply of fully qualified
7 teachers. Cal. Educ. Code §§ 44226.5, 44259, 44259.1-.5,
8 44259.8, 44275.3, 44279.1 et seq., 44380-86, 44390-93.

9 The State's goals in this areas are clear. Plaintiffs'
10 complaint quotes Governor Davis: his goal is "a first-rate
11 teacher for every classroom, in every school, in every
12 neighborhood." FAC 62:12.³ The Legislature has repeatedly
13 stated the same goal. Stats. 1997, Ch. 934, § 1; Stats. 1998,
14 Ch. 544 §§ 1,3; Stats. 1999, Ch. 381, §§ (a)-(b). Plaintiffs
15 agree. So, it may be assumed, does every local school district
16 in the State. There is thus no dispute in this case about the
17 objective of State policy. If there is a dispute that requires
18 Court intervention, it is about what measures are necessary or
19 appropriate to achieve the goal that everyone shares.

20 And that is precisely the subject about which
21 plaintiffs' complaint has nothing to say. The State, acting
22 through the Legislature and Governor, has tried to balance the
23 need to recruit and retain new teachers with its commitment to

24 ³ The State does not, of course, equate quality of teaching
25 to possession of the particular credentials that happen to be
26 required at any given point in time. (That is why, inter alia,
27 the State has explored alternative credentialing methods.) This
28 issue could become important in this case if it ever became
necessary to compare actual educational experiences in different
classrooms. For present purposes, however, it may be passed
over.

1 teacher quality. Therefore it has provided that no individual
2 teacher can use an emergency credential for more than five years
3 after 1998; that the entire emergency credential program (except
4 for remote areas) is to be phased out by 2002 and replaced by an
5 internship program; and that funds and assistance will be
6 available for a university-level program of training new
7 teachers. Cal. Educ. Code §§ 44251(c), 44300(1)-(3), 44305. Do
8 plaintiffs contend that this is constitutionally inadequate? Do
9 they think that five years is unconstitutionally long to
10 implement a program aimed at resolving a major social problem?
11 Do they think the Court can solve such a problem in a shorter
12 time? Or do they think the Court should simply assume that
13 measures the Governor and the Legislature have endorsed will not
14 work? One cannot tell.

15 Or perhaps plaintiffs think that the problem should be
16 solved not by recruitment of new teachers and training, as the
17 Governor and Legislature intend, but by the redistribution of
18 existing California teachers. Do they then propose that teachers
19 who have signed a contract with one school district should be
20 required to work for a different district? Do they propose that
21 the Court should abrogate existing collective bargaining
22 agreements that give teachers with greater experience and
23 seniority the right to choose the school and grade level where
24 they will teach? Plaintiffs do not say. But it is self-evident
25 that finding additional teachers for inner city schools requires
26 either: (1) recruiting and training new teachers; or (2)
27 redistributing existing ones.

28

1 Plaintiffs' complaint thus fails to advise the State of
2 what dispute, if any, is really present here. Plaintiffs say
3 there are no standards; they appear never to have heard of the
4 existing standards created by California law and regulation; they
5 do not allege that existing standards are constitutionally
6 inadequate. They say only (although repeatedly) that the State
7 must "establish adequate minimal standards regarding educational
8 personnel," must take steps to determine whether conditions
9 violating "those standards" exist in California, and must prevent
10 violations from occurring. FAC 68:7-10. But without knowing
11 what plaintiffs consider to be "adequate minimal standards
12 regarding educational personnel" it is impossible to know what
13 this case is about.

14 Hills Trans. Co. v. Southwest Forest Industries, 266
15 Cal. App. 2d 702 (1968), holds clearly that vague language of
16 this sort about an important issue renders a complaint vulnerable
17 to a special demurrer for uncertainty. In that case, plaintiff
18 alleged that the contract in issue was to last for a "reasonable"
19 time, but did not allege what that time was. The Court of Appeal
20 held that a special demurrer for uncertainty to such a complaint
21 was properly sustained. As the Court said,

22
23 The only thing said about the term of the contract is
24 that it was to continue for a reasonable time. How
25 long is a reasonable time -- one month, two months,
26 five months, one year, two years, five years? Having
27 run 15 months, had it run a reasonable time? Does
28 Hills contend that Southwest was required to continue
indefinitely shipment of newsprint by rail? Could never
change? Could only change on giving some particular
notice? On this point it seems obvious that the
pleading is uncertainty rampant.

1 266 Cal. App. 2d at 706.⁴

2 Exactly the same could be said of plaintiffs' complaint
3 here. What is an "adequate minimal standard"? That is the heart
4 of the issue presented by plaintiffs' complaint. If plaintiffs
5 are to be granted any relief, they (and the Court) must specify
6 what the State is required to do. Yet plaintiffs say not one
7 word about the content of the standard they desire. Their
8 pleading is "uncertainty rampant," as in Hills; and the State's
9 special demurrer for uncertainty ought to be sustained.

10

11 B. Textbooks.

12 Plaintiffs' allegations about textbooks are no clearer
13 than those regarding teachers. The First Amended Complaint again
14 ignores the existing state standards, and again fails to make
15 clear what dispute, if any, is actually present here.

16 Textbooks in California must be adopted by the State
17 Board of Education, and access to them must be furnished without
18 cost to pupils in public schools. Cal. Const. Art. 9 § 7.5; Cal.
19 Educ. Code §§ 60070, 60411. The Legislature has recently enacted
20 measures to ensure that sufficient textbooks are provided to
21 students. Beginning with fiscal year 1999-2000, the governing
22 board of each school district is required to hold a public
23 hearing each fiscal year to determine if the district will have
24 sufficient textbooks and instructional materials for each
25 student. Cal. Educ Code § 60119(a). If the board determines

26

27 ⁴ See also Gonzales v. California, 68 Cal. App. 3d 621, 632-
28 36 (1977); Hitson v. Dwyer, 61 Cal. App. 2d 803, 809 (1943);
Gridley v. Selleck, 92 Cal. App. 97 (1928).

1 that there is an insufficient number of textbooks, the board must
2 set forth the reason for the shortfall, must give notice to
3 parents and teachers, and must take action sufficient to remedy
4 the shortfall within a two-year period. Cal. Educ. Code §
5 60119(a)(2)(A). Since 1998, moreover, the Legislature has
6 adopted programs that by 2002 will distribute nearly \$2.2 billion
7 in state aid to districts for textbook purchases, an annual rate
8 effectively triple what was provided in 1997. Stats. 1998, Ch.
9 312; Stats. 1999, Ch. 50, Budget Items 6110-185-0001, 6110-186-
10 0001; Stats. 1999, Ch. 78 § 67.

11 Plaintiffs appear never to have heard of this
12 legislation, even though by means of it the State, through the
13 Governor and Legislature, has undertaken to remedy precisely the
14 problem of which plaintiffs complain. Plaintiffs do not allege
15 that any district has failed to hold the required public hearing;
16 they do not allege that any district has improperly failed to
17 make the required finding that adequate textbooks and
18 instructional materials are either available today or will be
19 available within two years.

20 Once again, the State agrees with plaintiffs that every
21 student in every public school should have a textbook. That is
22 the policy of the State. Indeed, that is the law of the State,
23 as set forth in § 60119 of the Education Code, and the State is
24 spending hundreds of millions of dollars annually to assist
25 school districts in coming into compliance. There is thus no
26 dispute in this case about goals or policy; there is at most a
27 dispute about implementation.

28

1 Yet the First Amended Complaint provides no clue about
2 what dispute, if any, plaintiffs have with the State over
3 implementation. They have not alleged that they consider the
4 requirements of Section 60119 constitutionally inadequate; much
5 less have they explained why. They claim that the State should
6 be ordered to establish "adequate minimal standards" regarding
7 "educational materials," FAC 68:7-8, but they provide no
8 explanation at all about what those standards should be.

9 With respect to textbooks as with respect to teachers,
10 plaintiffs' complaint is "uncertainty rampant," Hills Trans., 266
11 Cal. App. at 706, and the State's special demurrer for
12 uncertainty should be sustained.

13

14 C. School Facilities.

15 The third and last subject of plaintiffs' complaint is
16 educational facilities. Here too, plaintiffs ignore applicable
17 state laws and regulations which this Court is bound to notice
18 judicially. Evid. Code § 451(a)-(b).

19 The basic rule, in force for decades, is that "the
20 clerk of each district . . . shall, under the direction of the
21 governing board, keep the schoolhouses in repair during the time
22 school is taught therein." Cal. Educ. Code § 17593. Also,
23 "governing Boards, superintendents, principals, and teachers are
24 responsible for the sanitary, neat, and clean condition of the
25 school premises and freedom of the premises from conditions that
26 would create a fire or life hazard." Cal. Code Regs. Tit. 5, §
27 631.

28

1 This is the basic state standard applicable to the
2 condition of school facilities. If any school district has
3 violated it, plaintiffs have a remedy against that district.
4 Moreover, if any school district has discriminated against them
5 in the matter of school facilities (as they allege), plaintiffs
6 have an additional remedy under the State's Uniform Complaint
7 Procedures -- as more fully discussed in Section III infra.

8 In addition to the basic state standard requiring
9 maintenance of school facilities in good condition, plaintiffs'
10 specific concerns are also addressed by statute and regulation.
11 Thus school districts are required to provide "sufficient flush
12 water closets for the use of pupils," Cal. Educ. Code § 17576.
13 Cal. Code Regs. Tit. 5 § 631 provides that "adequate separate
14 toilet facilities shall be maintained for each sex." If
15 plaintiffs' allegations of inadequate bathroom facilities or
16 improper maintenance are true, a state standard is in place to
17 deal with the problem, and plaintiffs have a perfectly adequate
18 remedy against any non-compliant school district.

19 Finally, plaintiffs make a number of allegations about
20 overcrowding. This is a matter about which, once again, there is
21 no dispute as a matter of policy. The State's school population
22 has mushroomed over the last decade, and has grown especially in
23 the inner cities. The only real solution to overcrowded schools
24 is to build new ones. The Legislature put on the ballot in 1998,
25 and the voters passed, a bond issue in the amount of \$6.7 billion
26 to finance school facilities improvements and new school
27 construction. Cal. Educ. Code §§ 100400-100420.

28

1 The existing state standards for school facilities are
2 thus that existing facilities must be kept sanitary and in good
3 repair, while billions of dollars in bond proceeds are available
4 to build new ones for the relief of overcrowding. Plaintiffs'
5 complaint ignores these existing standards; and it utterly fails
6 to allege what alternative, additional, or different standards
7 plaintiffs believe the State is constitutionally required to
8 promulgate. The State's special demurrer for uncertainty should
9 be sustained.

10
11 **III. THE STATE'S DEMURRER TO THE FIRST AMENDED COMPLAINT**
12 **SHOULD BE SUSTAINED WITH LEAVE TO AMEND WHEN PLAINTIFFS**
13 **HAVE EXHAUSTED THEIR ADMINISTRATIVE REMEDIES.**

14 Even if the nature of plaintiffs' dispute with the
15 State were clear (which it is not), their complaint would still
16 be subject to demurrer. Plaintiffs allege a series of specific
17 deficiencies in services or facilities supposedly provided at a
18 few of the 8,563 schools in California; on the assumption that
19 their specific factual allegations are true, plaintiffs ask the
20 Court to conclude that the conditions alleged are widespread, and
21 request relief applicable to the entire State. But admini-
22 strative remedies available to plaintiffs could (and for all that
23 appears would) fix the specific problems on which their complaint
24 rests, and plaintiffs have not exhausted those remedies.

25 The remedies are part of the Uniform Complaint
26 Procedures ("UCP"), found at Cal. Code Reg. Tit.5 § 4600 et seq.⁵
27 Where, as here, the complaint is discrimination, the Uniform

28 ⁵ A copy is included as Exhibit A to this Memorandum for the
Court's convenience.

1 Complaint Procedures require that a complaint be filed with the
2 local agency. UCP § 4630(b). If the complainant requests direct
3 state intervention (which is available if the complainant will
4 suffer "an immediate loss of some benefit . . . if the Department
5 does not intervene"), the complaint may be filed directly with
6 the Department of Education. UCP § 4650. In that circumstance,
7 the Department makes a determination whether direct state
8 intervention is warranted. UCP § 4651. If so, it may address
9 the claim on the merits. UCP § 4660. If not, it forwards the
10 complaint to the local district for investigation. UCP §
11 4630(b)(2), 4651.

12 Following receipt of the complaint, the local district
13 is required to investigate the allegations of the complaint, and
14 to report its Decision to the complainant. UCP § 4630, 4631. If
15 the complainant is dissatisfied with the local district's
16 Decision, he or she may appeal to the Department. UCP § 4652.
17 Following an appeal, the Department is authorized to make an
18 investigation and prepare an Investigation Report, making
19 findings of fact, conclusions of law, and a recommendation for
20 corrective action by the local district. UCP §§ 4663, 4664. If
21 the local district does not comply with the Department
22 recommendation, the Department may "use any means authorized by
23 law to effect compliance." UCP §4670.

24 California law requires exhaustion of administrative
25 remedies. When a public or private entity has provided an
26 administrative remedy, a plaintiff is not entitled to ignore the
27 administrative process, and take the entity to court, merely
28 because the plaintiff prefers litigation. Quite the contrary.

1 "[E]xhaustion of administrative remedies is not a matter of
2 judicial discretion, but is a fundamental rule of procedure laid
3 down by courts of last resort, followed under the doctrine of
4 stare decisis, and binding upon all courts. . . . [E]xhaustion of
5 the administrative remedy is a jurisdictional prerequisite to
6 resort to the courts." Sierra Club v. San Joaquin Local Agency
7 Formation Comm., 21 Cal. 4th 489, 496 (1999); Abelleira v.
8 District Court of Appeal, 17 Cal. 2d 280, 293 (1941).

9 Numerous California cases have confirmed that the
10 requirement of exhaustion of administrative remedies is a "long-
11 settled rule of judicial administration," Robinson v. Dep't of
12 Fair Employment & Housing, 192 Cal. App. 3d 1414, 1416 (1987),
13 and have persistently rejected efforts by litigants, like
14 plaintiffs here, to avoid it. Bockover v. Perko, 28 Cal. App.
15 4th 479, 491 (1994) (administrative remedies must be exhausted
16 even if they are "advisory only"); County of Los Angeles v.
17 Farmers' Insurance Exchange, 132 Cal. App. 3d 77, 86 (1982)
18 (administrative remedies must be exhausted even if they are
19 couched in permissive language); Park 'N Fly of San Francisco,
20 Inc. v. City of South San Francisco, 188 Cal. App. 3d 1201, 1208
21 (1987) (exhaustion is not excused because the remedy "may or even
22 probably would be unavailing"); Barnes v. State Farm Mut. Auto
23 Ins. Co., 16 Cal. App. 4th 365, 380 (1993) (administrative
24 remedies must be exhausted even if the agency cannot provide the
25 precise relief sought by the plaintiff); Matthew Zaheri Corp. v.
26 Mitsubishi Motor Sales, 17 Cal. App. 4th 288, 293 (1993) (an
27 administrative remedy must be exhausted even if it cannot resolve
28 all the issues); P. W. Stephens, Inc. v. State Compensation

1 Insurance Fund, 21 Cal. App, 4th 1833, 1840 (1994); Alta Loma
2 School District v. San Bernardino County Committee, 124 Cal. App.
3 3d 542, 554-56 (1981).⁶

4 The First Amended Complaint nowhere alleges that
5 plaintiffs have exhausted their administrative remedies, although
6 it is plaintiffs' burden to plead and prove exhaustion. Park 'N
7 Fly, 188 Cal. App. 3d at 1208. Accordingly, the Court must
8 assume that plaintiffs' administrative remedies have not been
9 exhausted.

10 Materials of which the Court may take judicial notice,
11 moreover, show that plaintiffs invoked, but did not exhaust,
12 their administrative remedies.⁷ Those same materials also show
13 that requiring plaintiffs to exhaust their administrative
14 remedies in this case will be of great benefit to the Court and

15
16 ⁶ It may be acknowledged that in an ordinary tort or
17 contract action between private parties, a Court need not in all
18 circumstances require the parties to present their claims to an
19 administrative agency, even if the agency arguably has
20 jurisdiction to deal with them. Rojo v. Kliger, 52 Cal. 3d 65,
21 82-88 (1990); Miller v. Superior Court, 50 Cal. App. 4th 1665
(1996). But the situation is different when, as here, judicial
22 relief is sought against a defendant which itself provided the
23 administrative remedy, as the Supreme Court recognized in Rojo.
24 52 Cal. 3d at 86. In that circumstance no California court for
25 sixty years has failed to require exhaustion.

26 ⁷ On demurrer, the Court may consider allegations in
27 superseded pleadings. Perdue v. Crocker Nat'l Bank, 38 Cal. 2d
28 913, 923 n.5 (1985). Paragraph 184 of plaintiffs' Complaint,
filed May 17, 2000, alleged that plaintiffs had filed an
administrative complaint with the Superintendent of Public
Instruction. The Request for Judicial Notice and Declaration of
Benjamin Rozwood filed herewith include documents from the
Department of Education and the Ravenswood City School District,
which the Court may judicially notice pursuant to Evid. Code §
452(c), Watson v. Los Altos School District, 149 Cal. App. 2d
763, 771-73 (1957). They show what happened on plaintiffs'
administrative complaint.

1 the parties by simplifying issues and eliminating unfounded and
2 spurious allegations.

3 Plaintiffs filed their administrative complaint on May
4 17, 2000. Request for Judicial Notice ("Request"), Item 1.
5 Plaintiffs sought direct State intervention under UCP §4650. The
6 Department denied that request on June 23, 2000, on the ground
7 that no emergency was present. Accordingly, the Department
8 forwarded the administrative complaint to relevant local
9 districts for a response pursuant to UCP § 4651. Request, Items
10 2 and 3.

11 At least one school district (the Ravenswood City
12 School District in East Palo Alto) promptly responded to
13 plaintiffs' administrative complaint.⁸ Request, Item 4. The
14 administrative complaint, like plaintiffs' original complaint in
15 this action, made allegations about two schools in the Ravenswood
16 district -- Edison-McNair Academy and Cesar Chavez Academy.
17 Complaint, ¶¶ 88-92. With respect to both schools, plaintiffs
18 alleged discrimination because teachers were not fully
19 credentialed. The Ravenswood district pointed out that
20 plaintiffs' allegations of discrimination against poor and
21 minority children were unsubstantiated, since both the ethnic
22 composition of the two schools and the level of credentials
23 possessed by the teachers in those schools were consistent with
24 conditions in the district as a whole.

25

26 ⁸ Responses are forwarded directly to the complainant under
27 UCP § 4631(c), and neither the State nor the Department receives
28 a copy in the ordinary course. By chance the Ravenswood District
sent a copy of its response to the Department.

1 Plaintiffs' original complaint in this action also made
2 a number of other allegations about Cesar Chavez Academy, all of
3 which were included in the administrative complaint. The table
4 below compares plaintiffs' allegations with what the district
5 reported:

6	7 <u>Plaintiffs' Allegations</u>	8 <u>District's Report</u>
9	1. The school does not provide	1. Each classroom had
10	enough textbooks. Some classes	sufficient textbooks, except
11	have no textbooks at all; some	where a student lost a textbook
12	classes have too few.	and refused to pay replacement
13		cost as the district required.
14	2. "Many" classroom lights do	2. Schools were refurbished
15	not work.	with bond money in 1997-98 and
16		1998-99. No classroom lights
17	3. "Some" classrooms have	were found out of order.
18	broken windows.	
19	4. There is no air	3. No broken windows are
20	conditioning.	present. Repairs are made
21		within 24 hours.
22	5. There is no nurse.	4. Air conditioning is
23		unnecessary in this location;
24		most surrounding schools do not
25		have it.
26	6. When a child is hurt in an	5. The district employs a
27	accident, the school calls 911,	nurse; the incumbent resigned
28	and parents must pay for the	and the district is trying to
	ambulance and hospital care.	hire another.
		6. School policy is to notify
		parents, not call an ambulance.
		No ambulance was called during
		the 1999-2000 school year.

24 Plaintiffs apparently accepted the district's answers,
25 since they filed no appeal to the Department from the district's
26 report. More tellingly, when plaintiffs filed their First
27 Amended Complaint, they dropped from it all but the first of the
28 allegations listed in the table above. The result of the

1 administrative process was thus to eliminate, for the Ravenswood
2 District, the great majority of the issues about which plaintiffs
3 had originally complained.

4 Plaintiffs apparently did not regard this
5 simplification of the issues as desirable. Although the First
6 Amended Complaint added allegations about 28 new schools,
7 plaintiffs did not invoke the Uniform Complaint Procedures as
8 they had done before. They filed no new administrative
9 complaints. And they wrote the Department to withdraw all the
10 administrative complaints that they had previously filed.⁹
11 Request, Item 5. The obvious inference is that plaintiffs had
12 learned from their experience. They wanted to make allegations
13 without subjecting their contentions to challenge by persons
14 actually knowledgeable about the facts; and they preferred a

15 ⁹ Plaintiffs' excuse was that they are making a claim of
16 "statewide" discrimination which supposedly should not have been
17 referred to individual districts. Request, Item 5. This makes
18 little sense. We may concede that the UCP would not cover a
19 claim of inter-district disparity in educational experience --
20 e.g., a claim that the educational program of District A, viewed
21 as a whole, was unconstitutionally inferior to that of District
22 B. But the UCP clearly would cover the specific situations
23 alleged in plaintiffs' First Amended Complaint. For example,
24 plaintiffs allege that students at some schools in Los Angeles
25 lack textbooks, but they do not (and could not) allege that
26 students at all schools in Los Angeles lack textbooks. Quite the
27 contrary, plaintiffs' central contention is that students in
28 affluent areas (including presumably the many affluent areas of
the Los Angeles district) are treated better than students in
poorer areas. If Los Angeles is providing textbooks to affluent
students, while not providing them to poor students, there is
arguably discrimination between students within the district, and
the UCP apply.

From the practical point of view, moreover, plaintiffs are
drawing a distinction without a difference. If the claimed
discrimination is that students at a particular school do not
have textbooks, the solution is for the local district to supply
them with textbooks. That ends all discrimination, whether
within the district or "statewide." The UCP thus have the
potential to solve plaintiffs' real-world problems, regardless of
how plaintiffs' lawyers label their claims.

1 giant lawsuit to actual resolution of the matters that they
2 raised.

3 This history shows why exhaustion is useful and
4 desirable here. The Supreme Court has recently reiterated the
5 purposes served by the requirement of exhaustion as follows:

6
7 There are several reasons for the exhaustion of
8 remedies doctrine. "The basic purpose for the
9 exhaustion doctrine is to lighten the burden of
10 overworked courts in cases where administrative
11 remedies are available and are as likely as the
12 judicial remedy to provide the wanted relief." (*Morton*
13 *v. Superior Court* (1970) 9 Cal. App. 3d 977, 982.)
14 Even where the administrative remedy may not resolve
15 all issues or provide the precise relief requested by a
16 plaintiff, the exhaustion doctrine is still viewed with
17 favor "because it facilitates the development of a
18 complete record that draws on administrative expertise
19 and promotes judicial efficiency." (*Karlin v. Zalta*
20 (1984) 154 Cal. App. 3d 953, 980.) It can serve as a
21 preliminary administrative sifting process (*Bozaich v.*
22 *State of California* (1973) 32 Cal. App. 3d 688, 698),
23 unearthing the relevant evidence and providing a record
24 which the court may review. (*Westlake Community Hosp.*
25 *v. Superior Court* (1976) 17 Cal. 3d 465, 476.)

17
18 Sierra Club, 21 Cal. 4th at 501, quoting Yamaha Motor Corp. v.
19 Superior Court, 185 Cal. App. 3d 1232, 1240-41 (1986). Requiring
20 plaintiffs in this case to exhaust their administrative remedy
21 under the Uniform Complaint Procedures will serve every one of
22 the policy goals which the Supreme Court has identified.

23 First, requiring exhaustion will lighten this Court's
24 burden of dealing with what plaintiffs clearly want to be a
25 monster case. The history with the Ravenswood district shows
26 that the administrative process will simplify the litigation.
27 Completing the process with the other districts will undoubtedly
28 dispose of many hundreds more such allegations -- either because

1 the allegations were unfounded to begin with, or because faced
2 with plaintiffs' complaint the districts will fix any problems.
3 Administrative remedies are thus "as likely as the judicial
4 remedy" to provide relief. 21 Cal. 4th at 501.

5 Second, requiring exhaustion will permit development of
6 a record on the basis of which plaintiffs' allegations may be
7 judged. Once again, the history with Ravenswood is pertinent:
8 what appeared from plaintiffs' original complaint to be a
9 controversy about a district that supplied insufficient textbooks
10 turned out to concern whether a district may require that pupils
11 who lose their book pay a replacement fee. That is a very
12 different legal and factual matter from what plaintiffs' original
13 complaint suggested. Requiring exhaustion will allow the Court
14 to understand plaintiffs' allegations in their true context, even
15 where the administrative process does not dispose of the
16 allegations entirely.

17 Third, requiring exhaustion gives the Court the benefit
18 of the administrative expertise possessed by the local school
19 districts and (if plaintiffs appeal a district's determination)
20 by the Department of Education. Such considerations are
21 particularly important where, as here, plaintiffs wish the Court
22 to take over ultimate responsibility for the management of the
23 California system of public education. As more than one Court of
24 Appeal has said, exhaustion of administrative remedies is
25 especially appropriate where, as here, "it is apparent that a
26 court would benefit immensely . . . by having an expert
27 administrative analysis before attempting to grapple with such a
28 potentially broad-ranging and technical question" P.W.

1 Stephens, 21 Cal. App. 4th at 1840, quoting Farmers Ins. Exchange
2 v. Superior Court, 2 Cal. App. 4th 377, 400 (1992).

3 Fourth, requiring exhaustion will allow districts and
4 the Department to perform a "preliminary administrative sifting
5 process," to unearth the relevant evidence, and to provide a
6 record that will make the Court's task easier. The history with
7 Ravenswood shows how effective the process is. Giving the
8 administrative process a chance to work for the other districts
9 and schools involved in plaintiffs' First Amended Complaint will
10 have similar salutary effects.

11 An administrative remedy unquestionably exists.
12 Plaintiffs invoked it, then chose to abort the process when they
13 saw it might be effective. As a result, the State and the Court
14 will be burdened with multiple controversies which the
15 administrative process could and would resolve. That is
16 precisely why the judicial requirement of exhaustion exists.
17 When an administrative remedy is available, California law
18 requires that it be used. The Court has no jurisdiction to
19 proceed until plaintiffs have done so. Accordingly the State's
20 demurrer should be sustained, with leave given to plaintiffs to
21 amend when and if the administrative remedy has been exhausted.

22

23 **CONCLUSION**

24 Plaintiffs wish to proceed with a massive lawsuit whose
25 apparent objective is to overturn the existing system of public
26 education in California and replace it with a system administered
27 by platoons of lawyers under this Court's supervision. Before
28 anything like that happens, plaintiffs should be required to give

1 content to their vague phrases about "adequate minimal
2 standards," define the issues actually in dispute, and identify
3 just what standards they actually wish the Court to impose.
4 Similarly, before the State's public education system is
5 swallowed up in litigation, plaintiffs should exhaust the
6 administrative remedies that the law provides, let the
7 administrative process simplify and resolve large parts of this
8 controversy, and generate for the Court a workable record for
9 whatever is left.

10 The State's demurrer should be sustained, with leave
11 granted to plaintiffs to amend.

12

13

DATED: September 25, 2000

14

15

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(2) The plan has been approved by the school advisory council established under Section 4423.

(3) In the case of a school district in which there are one or more schools described in subsection (b) and there are also one or more other participating schools, the local educational agency makes EIA funds available for children in such schools described in subsection (b) in amounts which, per educationally disadvantaged child served, equal or exceed the amount of such funds made available per educationally disadvantaged child served in such other schools;

(4) EIA funds may be provided to such schools in amounts which, per child served who is not educationally disadvantaged, equal the amount of funds provided under this section which, per educationally disadvantaged child served, are made available for children in such schools; and

(5) The average per-pupil expenditure in schools described in subsection (b) (excluding amounts expended under this section) for the fiscal year in which the plan is to be carried out will not be less than such expenditure in such schools in the previous fiscal year.

(d) The Superintendent of Public Instruction may approve the plan of any local educational agency for a schoolwide program if that plan meets the requirements of subsection (c).

(e) For any school with an approved plan under this section, the local school district shall be relieved of requirements with respect to:

(1) Maintaining separate accounting records for each funding source.

(2) Identifying particular students as being eligible to participate, and

(3) Demonstrating that services provided from those funding sources are supplementary to the base program. The local district shall, however, demonstrate that the services provided in such schools are substantially greater than services furnished to schools without funding and shall meet all other school plan requirements contained in law and regulations.

NOTE: Authority cited: Sections 54004-54005, Education Code. Reference: 20 U.S.C. 2753.

Article 2. School Security

§ 4502. Improvement of School Security.

School districts may request that the Superintendent of Public Instruction approve a specific portion of the EIA funds they receive be designated for expenditure for noninstructional costs to improve school security. Such noninstructional expenditures may be used to meet costs arising from incidents of vandalism, necessary security costs, insurance costs, and/or other costs directly related to school security. In such application, school districts will specify the amounts of such funds and the purpose of such expenditures. No school district shall request an amount for such purposes which exceeds the portion of \$2,000,000 that the student population (K-12) of such district represents of the student population (K-12) of the state.

NOTE: Authority cited: Section 54007, Education Code. Reference: Section 54007, Education Code.

§ 4503. Alternative Program Options for Special Needs.

(a) EIA funds may be used to carry out any or all of the three alternative special program options permitted by this section subject to the provisions of subsection (b).

(b) Program options permitted by subsections (c), (d), and (e) of this section may only be exercised if:

(1) The school parent advisory council has approved and the district parent advisory council has reviewed the implementation of such option.

(2) The school proposing to exercise such option is a school which is participating in the state compensatory education program.

(3) Not more than 25 percent of a district's EIA allocation is expended to carry out the program options authorized by this section and the schoolwide program options authorized by Sections 4500 and 4501.

(4) A schoolwide needs assessment has been conducted to determine the necessity of providing such option(s).

(c) Students who have been eligible and have participated in compensatory education programs in accordance with the objective criterion es-

tablished by the district pursuant to Sections 4414 and 4415 may continue to participate in such services, even though such student no longer meets the objective criterion, if such student met the objective criterion in either of the two preceding fiscal years.

(d) In schools with more than 50 percent of their students from low income families (determined in accordance with Section 4412), students who do not meet the objective criterion established by the district pursuant to Sections 4414 and 4415, but who test below the 90th percentile (as established through the use of the appropriate test instruments pursuant to Section 4414) may be eligible to receive excess cost services in order that they may be assisted in reaching their full potential.

(e) If adequately documented in a schoolwide needs assessment, a participating SCE school may use EIA funds to conduct a schoolwide project which is explicitly designed to provide assistance to the educationally disadvantaged students attending such schools.

NOTE: Authority cited: Section 54005, Education Code. Reference: Section 54004.1, Education Code.

Subchapter 8. Bilingual Education Programs

NOTE: Authority cited: Section 54020, Education Code. Reference: Section 54004.7, Education Code.

HISTORY

1. Repealer of Chapter 8 (Sections 4300-4305) filed 9-5-79; effective thirtieth day thereafter (Register 79, No. 36). For history of former chapter, see Registers 78, No. 20; 77, No. 39; and 75, No. 21.

Subchapter 9. Bilingual-Bicultural Education Programs

NOTE: Authority cited: Section 54020, Education Code. Reference: Section 54004.7, Education Code.

HISTORY

1. Repealer of Chapter 9 (Articles 1-4; Sections 4310-4322, not consecutive) filed 9-5-79; effective thirtieth day thereafter (Register 79, No. 36). For history of former chapter, see Registers 78, No. 20; 77, No. 39; and 77, No. 13.

Chapter 5.1. Uniform Complaint Procedures

Subchapter 1. Complaint Procedures

Article 1. Definitions

§ 4600. General Definitions.

As used in this Chapter, the term:

(a) "Appeal" means a request made in writing to a level higher than the original reviewing level by an aggrieved party requesting reconsideration or a reinvestigation of the lower adjudicating body's decision.

(b) "Complainant" means any individual, including a person's duly authorized representative or an interested third party, public agency, or organization who files a written complaint alleging violation of federal or state laws or regulations, including allegations of unlawful discrimination in programs and activities funded directly by the state or receiving any financial assistance from the state.

(c) "Complaint" means a written and signed statement alleging a violation of a federal or state law or regulation, which may include an allegation of unlawful discrimination. If the complainant is unable to put the complaint in writing, due to conditions such as illiteracy or other handicaps, the public agency shall assist the complainant in the filing of the complaint.

(d) "Complaint Investigation" means an administrative process used by the Department or local agency for the purpose of gathering data regarding the complaint.

(b) A nonpublic system may establish advisory councils at its schools which receive Title I services.

(c) Applications for funds under this chapter must contain a certification of participation in the Title I/SCE planning process as follows:

- (1) District Application—the district advisory council chairperson;
- (2) School-level plans—the school advisory council chairperson;
- (3) The District Application—Nonpublic Schools section—a representative for the Nonpublic Schools.

NOTE: Authority cited: Section 54005, Education Code. Reference: 20 U.S.C. 2735; 45 C.F.R. 116a.25.

Article 9. Comparability

§ 4424. Comparability of Services.

(a) After July 1, 1979, in accordance with procedures established by the Department of Education, an application of a local educational agency for grants under Section 54420 of the California Education Code shall not be approved, nor payments made of SCE funds under a previously approved application of such agency, unless that local educational agency has demonstrated that exclusive of local, state, and federal categorical funding, including School Improvement Programs, State Compensatory Education Programs, and programs pursuant to Chapter 4, Article 4 of this division:

(1) The number of children enrolled per full-time equivalent classroom teacher and teacher's aide in schools pursuant to this section is not more than 105 percent of the average number of pupils per teacher and teacher's aide in all public schools serving comparable grade levels in the applicant's district, or

(2) The annual expenditure per child for salaries per full-time equivalent teacher and teacher's aide, exclusive of that portion of salary based on longevity, in schools providing programs pursuant to this section is not less than 95 percent of expenditures per child in all public schools serving comparable grade levels in the applicant's district, or

(3) The district can demonstrate to the satisfaction of the State Superintendent of Public Instruction that the resources per pupil enrolled in each school pursuant to this section is not less than the resources per pupil in all of the schools within the district serving comparable grade levels.

(b) After comparability has been demonstrated pursuant to subdivision (a) of this section, and with prior approval of the Superintendent of Public Instruction, a local educational agency experiencing high student mobility need not make adjustments in order to maintain comparability unless the percentage amount computed under (a)(1) is more than 110 or the percentage amount computed under (a)(2) is less than 90.

NOTE: Authority cited: Sections 33031 and 54005, Education Code. Reference: Sections 54000-54005, Education Code; and 20 U.S.C. 2736, 34 CFR 201.120.

HISTORY

1. Amendment filed 4-14-82; effective thirtieth day thereafter (Register 82, No. 16).

Article 10. California Preschool Program

§ 4425. California State Preschool Program.

California State Preschool Education Program funds are directed at children of low-income families. Preschool classes may be operated by any public agency or any private agency which meets eligibility requirements. Classes may be operated without regard to specific school sites, but preferably should be established in target areas to serve children who reside within the attendance areas of schools eligible for ESEA, Title I, or State Compensatory Education funds.

In order for children to be eligible for entrance into a State Preschool Education Program, the children must have reached their third birthday and have not yet reached the legally eligible age for kindergarten.

NOTE: Authority cited: Sections 54004-54005, Education Code. Reference: Section 8320, Education Code.

§ 4426. Maintenance of Effort.

Districts maintaining programs under this chapter shall assure that the sum of local and state apportionment resources utilized in programs for participating students has not been reduced. The following standards apply:

(a) Except as provided in subdivisions (c) and (d) of this section, the Superintendent of Public Instruction may approve an application from a Local Education Agency (LEA) or state agency for state compensatory education funds only if it is demonstrated in the application that its expenditures of state and local funds for the education of children, either on an aggregate or average daily attendance basis, are not less for the first fiscal year preceding the fiscal year in which the agency is applying for funds than for the second preceding fiscal year.

(b) In demonstrating compliance with the requirement in subdivision (a) of this section, only the following expenditures may be included in the computation:

(1) Expenditures by object classifications 1000 through 5000 series in the California School Accounting Manual, 1980 Edition, except expenditures for community service classes, and

(2) Expenditures of federal funds received under Public Law 874 (School Assistance in Federally Affected Areas).

(c) In determining compliance with the requirement in subdivision (a) of this section, the Superintendent of Public Instruction may disregard a decrease of less than ten percent in allowable expenditures from the second preceding fiscal year to the first preceding fiscal year.

(d) Upon written application, the Superintendent of Public Instruction may determine that the LEA or state agency is in substantial compliance with the requirement in subdivision (a) of this section, provided, the applicant demonstrates that any decrease in allowable expenditures from the second preceding fiscal year to the first preceding fiscal year did not result in any decrease in the level of services provided.

NOTE: Authority cited: Sections 33031 and 54005, Education Code. Reference: Section 54001, Education Code; and 20 U.S.C. 2736, 34 CFR 200.60-200.61.

HISTORY

1. New section filed 4-14-82; effective thirtieth day thereafter (Register 82, No. 16).

Subchapter 7. Miscellaneous Programs

Article 1. Schoolwide Programs

§ 4500. Low Income Schoolwide Programs.

EIA funds and/or local funds may be used to satisfy the requirement of Section 20 U.S.C. 2753(b)(7)(B) pertaining to low income schoolwide programs.

NOTE: Authority cited: Section 54004, Education Code; 20 U.S.C. 2812. Reference: 20 U.S.C. 2751.

HISTORY

1. New Chapter 7 (Sections 4500-4503) filed 9-5-79; effective thirtieth day thereafter (Register 79, No. 36).

§ 4501. Low Achievement Schoolwide Programs.

(a) A school district may, after reviewing advice from the district parent advisory council established under Section 4423, use a portion of its EIA funds to satisfy the requirements of subsection (b) of this section.

(b) Notwithstanding any provision of Chapters 5, 6, or 7 of this division, a school district may use a portion of its EIA funds and/or local funds to meet the needs of educationally disadvantaged students by improving the entire educational program in a school in which not less than 75 percent of the students are educationally disadvantaged (in accordance with criteria used by the school district to satisfy the requirements of Section 4415) if the requirements of subsection (c) are met.

(c) A school may be designated for a schoolwide program under subsection (b) if:

(1) A plan has been developed meeting the requirements of 20 U.S.C. 2753(b)(1), (2), (3), (5), and (6);

(e) "Complaint Procedure" means an internal process used by the Department or local agency to process and resolve complaints.

(f) "Compliance Agreement" means an agreement between the Department and a local agency, following a finding of noncompliance by the Department, developed by the local agency and approved by Department to resolve the noncompliance.

(g) "Days" means calendar days unless designated otherwise.

(h) "Department" means the California Department of Education.

(i) "Direct State Intervention" means the steps taken by the Department to initially investigate complaints or effect compliance.

(j) "Local Agency" means a school district governing board or a local public or private agency which receives direct or indirect funding or any other financial assistance from the state to provide any school programs or activities or special education or related services. "Local educational agency" includes any public school district and county office of education.

(k) "Mediation" means a problem-solving activity whereby a third party assists the parties to a dispute in resolving the problem.

(l) "State Mediation Agreement" means a written, voluntary agreement, approved by the Department, which is developed by the local agency and complainant with assistance from the Department to resolve an allegation of noncompliance.

(m) "State Agency" means the State Departments of Mental Health or Health Services or any other state administrative unit that is or may be required to provide special education or related services to handicapped pupils pursuant to Government Code section 7570 et seq.

(n) "Superintendent" means the Superintendent of Public Instruction or his or her designee.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 210, 220, and 260, Education Code; Sections 11135 and 11138, Government Code.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 2. Purpose and Scope

§ 4610. Purpose and Scope.

(a) This Chapter applies to the filing, investigation and resolution of a complaint regarding an alleged violation by a local agency of federal or state law or regulations governing educational programs, including allegations of unlawful discrimination, in accordance with the provisions of Title 34, CFR, Sections 76.780-783 and 106.8; Title 22, CCR, Sections 98300-98382; and California Education Code Sections 49556 and 8257. The purpose of this Chapter is to establish a uniform system of complaint processing for specified programs or activities which receive state or federal funding.

(b) This Chapter applies to the following programs administered by the Department:

(i) Adult Basic Education established pursuant to Education Code sections 8500 through 8538 and 52500 through 52616.5;

(ii) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a);

(iii) Migrant Education established pursuant to Education Code sections 54440 through 54445;

(iv) Vocational Education established pursuant to Education Code sections 52300 through 52480;

(v) Child Care and Development programs established pursuant to Education Code sections 8200 through 8493;

(vi) Child Nutrition programs established pursuant to Education Code sections 49490 through 49560; and

(vii) Special Education programs established pursuant to Education Code sections 56000 through 56885 and 59000 through 59300.

(c) This Chapter also applies to the filing of complaints which allege unlawful discrimination on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, in any program or

activity conducted by a local agency, which is funded directly by, or that receives or benefits from any state financial assistance.

NOTE: Authority cited: Sections 232, 8261, 33031, 49531, 49551, 54445, 52355, 52451, and 56100(a) and (j), Education Code; Section 11138, Government Code. Reference: Sections 210, 220, 260, and 49556, Education Code; Sections 11135 and 11138, Government Code.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4611. Referring Complaint Issues to Other Appropriate State or Federal Agencies.

The following complaints shall be referred to the specified agencies for appropriate resolution and are not subject to the local and Department complaint procedures set forth in this Chapter unless these procedures are made applicable by separate interagency agreements:

(a) Allegations of child abuse shall be referred to the applicable County Department of Social Services (DSS), Protective Services Division or appropriate law enforcement agency. However, nothing in this section relieves the Department from investigating complaints pursuant to section 4650(a)(viii)(C).

(b) Health and safety complaints regarding a Child Development Program shall be referred to Department of Social Services for licensed facilities, and to the appropriate Child Development regional administrator for licensing-exempt facilities.

(c) Discrimination issues involving Title IX of the Educational Amendments of 1972 shall be referred to the U.S. Office of Civil Rights (OCR). Title IX complainants will only be referred to the OCR if there is no state discrimination law or regulation at issue. Unless otherwise negotiated through a memorandum of understanding/agreement, a preliminary inquiry and/or investigation concerning these complaints will be conducted by OCR. The complainant shall be notified by certified mail if his or her complaint is transferred to OCR by the Superintendent.

(d) Complaints of discrimination involving Child Nutrition Programs administered by the Department from program participants or applicants shall be referred to either Administrator, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA 22302 or Secretary of Agriculture, Washington, D.C. 20250. Discrimination complaints received by a local agency or the Department shall be immediately directed to U.S. Department of Agriculture, Food and Nutrition Service, Western Regional Office.

(e) Employment discrimination complaints shall be sent to the State Department of Fair Employment and Housing (DFEH) pursuant to Title 22, CCR, Section 98410. The complainant shall be notified by certified mail of any DFEH referral.

(f) Allegations of fraud shall be referred to the responsible Department Division Director and the Department's Legal Office.

NOTE: Authority cited: Sections 33031, 71020 and 71025, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136 and 11138, Government Code; 34 CFR 76.780-76.783.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

2. Amendment of subsection (a) and NOTE filed 4-27-92 as an emergency; operative 4-27-92 (Register 92, No. 18). A Certificate of Compliance must be transmitted to OAL 8-25-92 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 4-27-92 order transmitted to OAL 10-15-92 and filed 10-28-92 (Register 92, No. 44).

4. Change without regulatory effect amending subsection (c), adopting new subsection (d) and relettering subsections filed 12-16-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 51).

Article 3. Local Agency Compliance

§ 4620. Local Educational Agency Responsibilities.

Each local education agency shall have the primary responsibility to insure compliance with applicable state and federal laws and regulations. Each local educational agency shall investigate complaints alleging failure to comply, and seek to resolve those complaints in accordance with the procedures set out in this Chapter.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Section 260, Education Code; Section 11135, Government Code; and 34 CFR 76.780 - 76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4621. District Policies and Procedures.

(a) Each local educational agency shall adopt policies and procedures consistent with this Chapter for the investigation and resolution of complaints. Local policies shall ensure that complainants are protected from retaliation and that the identity of the complainant alleging discrimination remain confidential as appropriate. School Districts and County Offices of Education shall submit their policies and procedures to the local governing board for adoption within one year from the effective date of this chapter. Upon adoption, the district may forward a copy to the Superintendent.

(b) Each local educational agency shall include in its policies and procedures the person(s), employee(s) or agency position(s) or unit(s) responsible for receiving complaints, investigating complaints and ensuring local educational agency compliance. The local educational agency's policies shall ensure that the person(s), employee(s), position(s) or unit(s) responsible for compliance and/or investigations shall be knowledgeable about the laws/programs that he/she is assigned to investigate.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Section 260, Education Code; Section 11135, Government Code; and 34 CFR 76.780 - 76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4622. Notice; Notice Recipients; Notice Requirements.

Each local educational agency shall annually notify in writing, as applicable, its students, employees, parents or guardians of its students, the district advisory committee, school advisory committees, and other interested parties of their local educational agency complaint procedures, including the opportunity to appeal to the Department and the provisions of this Chapter. The notice shall include the identity (identities) of the person(s) responsible for processing complaints. The notice shall also advise the recipient of the notice of any civil law remedies that may be available, and of the appeal and review procedures contained in sections 4650, 4652, and 4671 of this Chapter. This notice shall be in English, and when necessary, in the primary language, pursuant to section 48985 of the Education Code, or mode of communication of the recipient of the notice.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135 and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 4. Local Complaint Procedures

§ 4630. Filing a Local Complaint; Procedures, Time Lines.

(a) For other than discrimination complaints, any individual, public agency or organization may file a written complaint with the administrator/superintendent of the local educational agency, alleging a matter which, if true, would constitute a violation by that local educational agency of federal or state law or regulation governing the programs listed in section 4610(b) of this Chapter.

(b) An investigation of alleged unlawful discrimination shall be initiated by filing a complaint not later than six months from the date the alleged discrimination occurred, or the date the complainant first obtained knowledge of the facts of the alleged discrimination unless the time for filing is extended by the Superintendent, upon written request by the complainant setting forth the reasons for the extension. Such extension by the Superintendent shall be made in writing. The period for filing may be extended by the Superintendent for good cause for a period not to exceed 90 days following the expiration of the time allowed. The Superin-

tendent shall respond immediately upon receipt of requests for extensions.

(1) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination, or by one who believes an individual or any specific class of individuals has been subjected to discrimination prohibited by this part.

(2) The complaint shall be filed with the local educational agency director/district superintendent or his or her designee, unless the complainant requests direct intervention by the Department pursuant to Article 6 of this Chapter.

(3) An investigation of a discrimination complaint shall be conducted in a manner that protects confidentiality of the parties and the facts.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4631. Responsibilities of the Local Agency.

(a) Within 60 days from receipt of the complaint, the local educational agency superintendent or his or her designee shall complete the investigation of the complaint in accordance with the local procedures developed pursuant to section 4621 and prepare a written Local Educational Agency Decision. This time period may be extended by written agreement of the complainant.

(b) The investigation shall provide an opportunity for the complainant, or the complainant's representative, or both, and local educational agency representatives to present information relevant to the complaint. The investigation may include an opportunity for the parties to the dispute to meet to discuss the complaint or to question each other or each other's witnesses.

(c) The Local Educational Agency Decision (the Decision), shall be in writing and sent to the complainant within sixty (60) days from receipt of the complaint by the local agency. The Decision shall contain the findings and disposition of the complaint, including corrective actions if any, the rationale for such disposition, notice of the complainant's right to appeal the local educational agency decision to the Department, and the procedures to be followed for initiating an appeal to the Department.

(d) Local Educational Agencies may establish procedures for attempting to resolve complaints through mediation prior to the initiation of a formal compliance investigation. Conducting local mediation shall not extend the local time lines for investigating and resolving complaints at the local level unless the complainant agrees, in writing, to the extension of the time line. In no event shall mediation be mandatory in resolving complaints.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4632. Forward to Superintendent.

Upon notification by the Superintendent that the Local Educational Agency Decision has been appealed to the state level pursuant to section 4652, the local educational agency shall forward the following to the Superintendent:

(a) The original complaint;

(b) A copy of the Local Educational Agency Decision;

(c) A summary of the nature and extent of the investigation conducted by the local agency, if not covered in the Local Educational Agency Decision;

(d) A report of any action taken to resolve the complaint;

(e) A copy of the local educational agency complaint procedures; and

(f) Such other relevant information as the Superintendent may require.

NOTE: Authority cited: Section 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

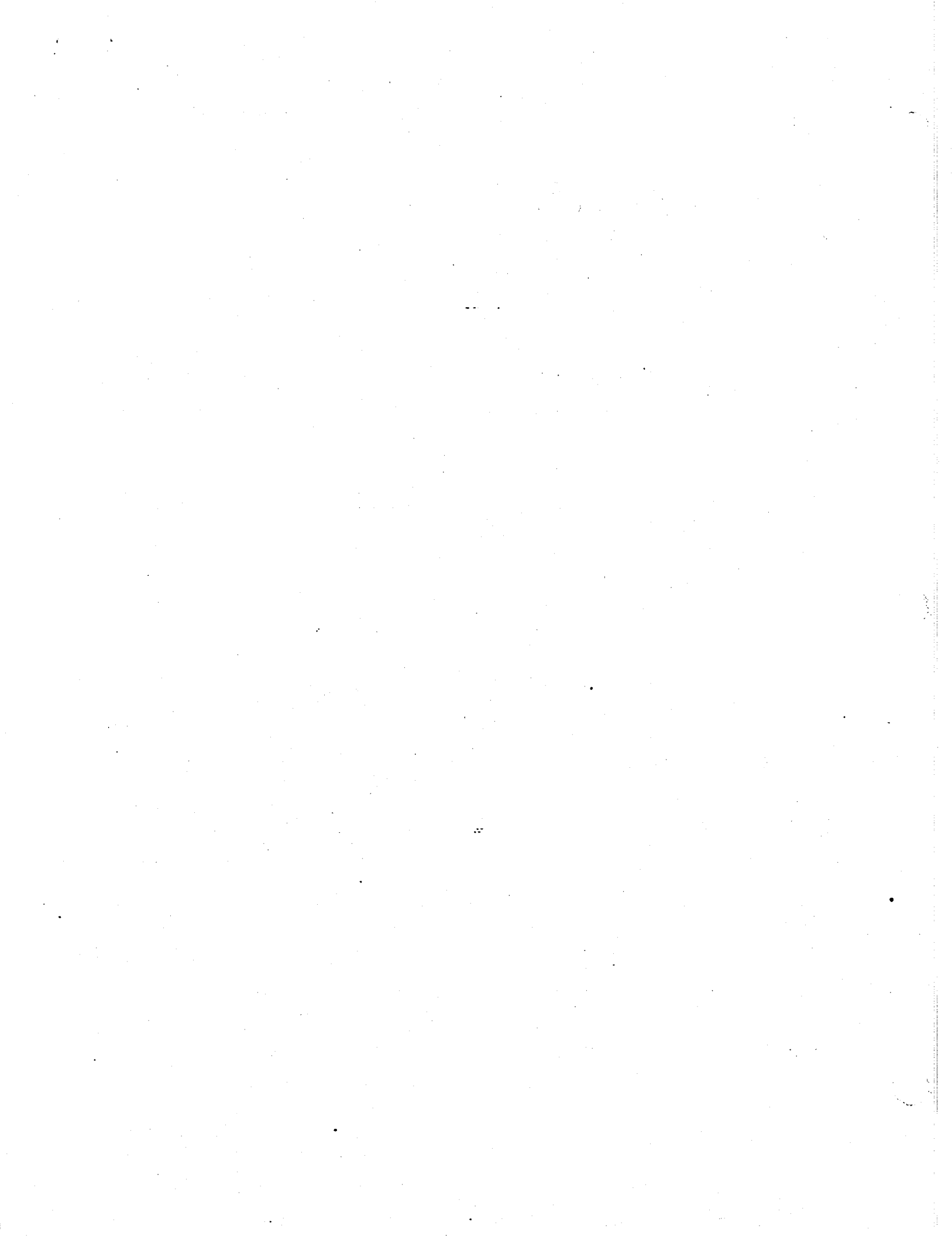
(1) If a complaint is erroneously first sent to the Superintendent without local educational agency investigation, the Superintendent shall immediately forward the complaint to the local educational agency for processing in accordance with Article 4 of this Chapter, unless

Article 5. State Complaint Procedures

§ 4640. Filing a State Complaint That Has Not First Been Filed at the Local Agency; Time Lines, Notice, Appeal Rights.

(a) Referral to the Local Educational Agency for Local Resolution.

[The next page is 52.3.]



circumstances necessitating Department intervention as described at Section 4650 exist.

(2) The complainant(s) shall be sent a letter to notify him, her, or them of 1) the transferred complaint, 2) the State request for local educational agency resolution, and 3) to advise of Department appeal procedures.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 6. Direct State Intervention

§ 4650. Basis of Direct State Intervention.

(a) The Superintendent shall directly intervene without waiting for local agency action if one or more of the following conditions exists:

(i) The complaint includes an allegation, and the Department verifies, that a local educational agency failed to comply with the complaint procedures required by this Chapter;

(ii) Discrimination is alleged by the complainant and the facts alleged indicate that the complainant will suffer an immediate loss of some benefit such as employment or education if the Department does not intervene. However, nothing in this section gives the Department jurisdiction over employment discrimination claims.

(iii) The complaint relates to agencies other than local educational agencies funded through the Child Development and Child Nutrition Programs;

(iv) The complainant requests anonymity and presents clear and convincing evidence and the Department verifies that he or she would be in danger of retaliation if a complaint were filed locally, or has been retaliated against because of past or present complaints;

(v) The complainant alleges that the local educational agency failed or refused to implement the final decision resulting from its local investigation or local Mediation Agreement;

(vi) The local agency refuses to respond to the Superintendent's request for information regarding a complaint;

(vii) The complainant alleges and the Department verifies, or the Department has information that no action has been taken by the local educational agency within 60 calendar days of the date the complaint was filed locally.

(viii) For complaints relating to special education the following shall also be conditions for direct state intervention:

(A) The complainant alleges that a public agency, other than a local educational agency, as specified in Government Code section 7570 et seq., fails or refuses to comply with an applicable law or regulation relating to the provision of free appropriate public education to handicapped individuals;

(B) The complainant alleges that the local educational agency or public agency fails or refuses to comply with the due process procedures established pursuant to federal and state law and regulation; or has failed or refused to implement a due process hearing order;

(C) The complainant alleges facts that indicate that the child or group of children may be in immediate physical danger or that the health, safety or welfare of a child or group of children is threatened.

(D) The Complainant alleges that a handicapped pupil is not receiving the special education or related services specified in his or her Individualized Educational Program (IEP).

(E) The complaint involves a violation of federal law governing special education, 20 U.S.C. section 1400 et seq., or its implementing regulations.

(b) The complaint shall identify upon which basis, as described in paragraph (a) of this section, that direct filing to the State is being made.

NOTE: Authority cited: Section 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4651. Direct State Intervention Time Line.

When the Superintendent receives a complaint requesting direct State intervention, the Superintendent shall determine whether the complaint meets one or more of the criterion specified in Section 4650 for direct State intervention and shall immediately notify the complainant by mail of his or her determination. If the complaint is not accepted, it shall be referred for local investigation pursuant to section 4631, or referred to another agency pursuant to Section 4611.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4652. Appealing Local Agency Decisions.

(a) Any complainant(s) may appeal a Local Educational Agency Decision to the Superintendent by filing a written appeal with the Superintendent within (15) days of receiving the Local Educational Agency Decision. Extensions for filing appeals may be granted, in writing, for good cause.

(b) The complainant shall specify the reason(s) for appealing the local educational agency decision.

(c) The appeal shall include:

(1) a copy of the locally filed complaint; and

(2) a copy of the Local Educational Agency Decision.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 7. State Resolution Procedures

§ 4660. Department Resolution Procedures.

(a) When direct State intervention is warranted pursuant to any provision of section 4650, or when an appeal has been filed of a local agency decision pursuant to Section 4652, the following procedures shall be used to resolve the issues of the complaint:

(1) The Department shall offer to mediate the dispute which may lead to a state mediation agreement; and

(2) The Department shall conduct an on-site investigation if either the district or the complainant waives the mediation process or the mediation fails to resolve the issues.

(b) If the complaint involves several issues, nothing shall prohibit the parties from agreeing to mediate some of the issues while submitting the remainder for Department investigation. Mediation shall be conducted within the 60 day time line specified in Section 4662(d), and

(c) Mediation shall not exceed thirty (30) days unless the local or public agency and the complainant agree to an extension.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4661. Mediation Procedures; State Mediation Agreements; Notice.

(a) Initial process.

(1) Agency and Complainant(s) Notification. Each party in the dispute shall be contacted by the Department and offered the mediation process as a possible means of resolving the complaint. Should the parties agree to enter into mediation, written confirmation shall be sent indicating the time and place of the mediation conference, and the allegations to be addressed.

(2) Upon local agency and complainant acceptance of the Department's offer to mediate, the allegations to be addressed shall be sent by certified mail to each party.

(3) The Superintendent shall appoint a trained mediator or mediation team to assist the parties in reaching a voluntary agreement.

(b) Mediation Results - State Mediation Agreement.

(1) The mediation results will be documented in a state mediation agreement and signed by the involved parties to the dispute using the following forms as appropriate. (Stipulation to Initiate Mediation, Form CS-19; Signed Mediation Agreement Letter to District, Form CS-24; and Mediation Process Agreement, Form CS-25).

(2) The mediator or mediation team shall confirm that the agreement is consistent with all applicable state and federal laws and regulations.

(3) A copy of the written state mediation agreement shall be sent to each party.

(4) The compliance status of a local agency will revert to noncompliance if the local agency does not perform the provisions of the mediation agreement within the time specified in the mediation agreement.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4662. On-Site Investigation Process; Appointment, Notification, Time Line; Extending Investigation Time Lines.

(a) If either party waives mediation or the mediation fails, in part or in whole, those remaining unresolved issues shall be addressed through the investigation process.

(b) Appointment.

If an on-site investigation is necessary, an investigator(s) shall be appointed by the Superintendent.

(c) Agency and Complainant(s) Notification

At least two weeks prior to the date of an investigation, each party in the dispute shall be sent written notification by the Department of the name(s) of the investigator(s) and the investigation date(s). The notice shall explain the investigation process.

(d) Time line.

An investigation shall be completed within sixty (60) days after receiving a request for direct intervention or an appeal request, unless the parties have agreed to mediate and agree to extend the time lines. The Superintendent or his or her designee may grant extensions for the investigation only if exceptional circumstances exist with respect to the particular complaint, and provided that the complainant is informed of the extension and the reasons therefore and provided that the facts supporting the extension are documented and maintained in the complaint file.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4663. Department Investigation Procedures.

(a) The investigator(s) shall request all documentation regarding the allegations. The investigator(s) shall interview the complainant(s), agency administrators, staff, related committees/groups, and any other involved persons, as appropriate, to determine the facts in the case. An opportunity shall be provided for the complainant(s), or the complainant's(s)' representative, or both, and the agency involved to present information.

(b) Refusal by the local agency or complainant to provide the investigator with access to records and other information relating to the complaint which the investigator is privileged to review, or any other obstruction of the investigative process shall result in either a dismissal of the complaint or imposition of official applicable sanctions against the local agency.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4664. Department Investigation Report.

An investigation report shall be submitted to the Superintendent for review and approval. The investigation report shall include the following information:

(1) A transmittal Letter that includes information about how the agency or the complainants may appeal the decision to the Office of the State Superintendent,

(2) General procedures of the investigation;

(3) Citations of applicable law and regulations;

(4) Department findings of facts;

(5) Department conclusions;

(6) Department required actions, if applicable;

(7) Department recommended actions, if applicable; and

(8) Time line for corrective actions, if applicable.

(c) Report Time line.

An investigation report shall be mailed to the parties within sixty (60) days from the date of receipt of the request for direct state intervention or an appeal, unless the parties have participated in mediation and agreed to an extension of the mediation time lines or the Superintendent has granted an extension pursuant to Section 4662(d).

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4665. Discretionary Reconsideration or Appeal of SDE Investigation Report.

(a) Within 35 days of receipt of the Department investigation report, either party may request reconsideration by the Superintendent. The Superintendent may, within fifteen (15) days of receipt of the request, respond in writing to the parties either modifying the conclusions or required corrective actions of the Department report or denying the request outright. During the pending of the Superintendent's reconsideration, the Department report remains in effect and enforceable.

(b) Appeals by private agencies regarding Child Care Food Programs shall be made to the State Office of Administrative Hearings in accordance with applicable laws rather than the Superintendent. Appeals from investigations of complaints involving Child Development contractors, whether public or private, shall be made to the Superintendent of Public Instruction as provided in subsection (a) except as otherwise provided in Division 19 of Title 5 of the Code of California Regulations.

(c) For those programs governed by Part 76 of Title 34 of the Code of Federal Regulations, the parties shall be notified of the right to appeal to the United States Secretary of Education.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.1 and 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 8. Enforcement—State Procedures to Effect Compliance

§ 4670. Enforcement.

(a) Upon determination that a local agency violated the provisions of this chapter, the Superintendent shall notify the local agency of the action he or she will take to effect compliance. The Superintendent may use any means authorized by law to effect compliance, including:

(1) The withholding of all or part of the local agency's relevant state or federal fiscal support;

(2) Probationary eligibility for future state or federal support, conditional on compliance with specified conditions;

(3) Proceeding in a court of competent jurisdiction for an appropriate order compelling compliance.

(b) No decision to curtail state or federal funding to a local agency under this chapter shall be made until the Superintendent has determined that compliance cannot be secured by voluntary means.

(c) If the Superintendent determines that a Child Development Contractor's Agreement shall be terminated, the procedures set forth in sections 8257(d) or 8400 et seq. of the Education Code and the regulations promulgated pursuant thereto (Chapter 19 of Title 5, CCR, commencing with section 17906), shall be followed.

(d) If the Superintendent determines that a school district or county office has failed to comply with any provision of sections 49550 through 49554 of the Education Code, the Superintendent shall certify such non-compliance to the Attorney General for investigation pursuant to section 49556 of the Education Code.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

History

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4671. Federal Review Rights.

If the Superintendent elects to withhold funds from a local agency that refuses or fails to comply in a program governed by 34 CFR Part 76, the Superintendent shall notify the local agency of the decision to withhold funding and of the local agency's rights of appeal pursuant to 34 CFR section 76.401.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: 34 CFR 76.780-76.783.

History

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Chapter 5.2. Improvement of Elementary and Secondary Education

NOTE: Authority cited: Section 52039, Education Code. Reference: Sections 52013 and 52039(b)(2), Education Code.

History

1. Expired by own terms 12-31-78 (Register 80, No. 25). For prior history, see Register 77, No. 47.

Chapter 5.3. Nondiscrimination

Subchapter 1. Nondiscrimination in Elementary and Secondary Educational Programs Receiving State Financial Assistance

Article 1. General Provisions

§ 4900. Purpose.

(a) The purpose of this chapter is to ensure that no person in the State of California shall be subjected to discrimination, excluded from participation or denied the benefits of any public school program or activity on the basis of race, ancestry, ethnic group identification, religion, creed, age, sex, color, physical or mental disability or marital or parental status in any program or activity conducted by an "educational institution" or any other "local agency," defined in Article 2 of this Chapter, which is funded directly by, or that receives or benefits from any state financial assistance.

(b) All educational programs and activities under the jurisdiction of the State Board of Education receiving or benefiting from state financial assistance shall be available to all qualified persons without regard to race, ancestry, ethnic group identification, religion, creed, age, sex, color, physical or mental disability, or marital or parental status.

(c) It is the intent of the State Board of Education that the Superintendent of Public Instruction assist school districts and county offices of education to recognize and eliminate unlawful discrimination that may exist within their programs or activities and to meet the requirements of this chapter. The Superintendent shall meet this responsibility through technical assistance and ensuring compliance in accordance with Chapter 5.1 commencing with section 4600 of this Title.

NOTE: Authority cited: Sections 232 and 33031, Education Code; and Section 11138, Government Code. Reference: Sections 220 and 230, Education Code; Sections 11135-11139.5, Government Code; 42 USC 2000d; 20 USC 1681 and 1682; and 34 CFR 106.1.

History

1. New chapter 5.3 (sections 4900-4962, nonconsecutive) filed 12-16-92; operative 1-15-93 (Register 92, No. 51).

§ 4901. Academic Requirements.

Nothing in this chapter shall be interpreted to prohibit bona fide academic requirements for participation in a specific public school program, course or activity.

NOTE: Authority cited: Sections 232 and 33031, Education Code; and Section 11138, Government Code. Reference: Sections 35160.5 and 49067, Education Code; Sections 11135-11139.5, Government Code; and 34 CFR 106.

History

1. New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).

§ 4902. Responsibility.

Except as otherwise stated in this chapter, the Superintendent of Public Instruction is responsible for providing leadership to ensure that the requirements of the following nondiscrimination laws and their related regulations are met in educational programs that receive or benefit from state financial assistance and are under the jurisdiction of the State Board of Education:

- (a) Education Code sections 200 through 251.
- (b) Government Code sections 11135 through 11139.
- (c) Title IV of the Civil Rights Act (CRA) of 1964 at 42 USC 2000c.
- (d) Title VI of the CRA of 1964 at 42 U.S.C. 2000d.
- (e) Title IX of the Education Amendments of 1972 at 20 USC 1681.
- (f) Age Discrimination Act of 1975 at 42 U.S.C. 6102.
- (g) Section 504 of the Rehabilitation Act of 1973 at 29 USC 794.
- (h) Gov. Code 12900 et seq.
- (i) Title VII of the 1964 Civil Rights Act.
- (j) Title IIA-Vocational Education Act (PL 94-492).

(k) Any and all other federal and state laws and regulations involving assurances that school districts will not discriminate on the basis of race, ancestry, ethnic group identification, religion, creed, age, color, sex, or a mental or physical disability, marital or parental status.

NOTE: Authority cited: Sections 232 and 33031, Education Code; and Section 11138, Government Code. Reference: Section 33111, Education Code; and Sections 11135-11139, Government Code.

History

1. New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).

Article 2. Definitions

§ 4910. General Definitions.

The terms used in this chapter shall be construed with reference to the laws and regulations existing on the date of the enactment of this section. As used in this Chapter, the term:

- (a) "Activity" or "program and activity" means the same as the definition set out below for the word "program."
- (b) "Board" means the California State Board of Education.
- (c) "Color" includes the concept "race" as it is used in Title IV and Title VI of the Federal Civil Rights Act of 1964, respectively commencing at 42 USC 2000c and 20 USC 2000d.
- (d) "Department" means the California Department of Education.
- (e) "Ethnic group identification" includes the concept of "national origin" as it is used in Title IV and Title VI of the Federal Civil Rights Act of 1964, respectively commencing at 42 USC 2000c and 20 USC 2000d.

(f) "Equal opportunity" and "equivalent opportunity" are used synonymously and mean equal or equal in effect.

(g) "Local Agency (LA)" means a school district governing board or county office of education or a local public or private agency which receives direct or indirect funding from the Department to provide any school programs or activities.

(h) "Person" includes but is not limited to employees, applicants for employment, agents and representatives of the educational institution, students, applicants for admission and volunteers.

(i) "'Program' or 'program activity'" is defined to include the definition of "program and activity" as set out at Health and Welfare regulation 22 CCR 98010 and to include extra curricular, research, occupational programs, honors, students services and other activities as well as include the operations of an "educational institution" as defined at Education Code section 210. All specified institutions are meant to entail the operations of:

(1)(A) a department, agency, special purpose district, or other instrumentality or any educational institution; or

(B) the entity of such educational institution that distributes such assistance and each such department or agency to which the assistance is extended; or

(2)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which State financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(3) any other entity which is established by two or more educational institutions or the entities described in paragraph (1) or (2); any part of which is extended State financial assistance, except that such term does not include any operation of an entity which is controlled by a religious organization if the application of this Chapter to such operation would not be consistent with the religious tenets of such organization.

(4) Small providers are not required by this subsection to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility to the physically disabled, if alternative means of providing the services are available.

(j) "Superintendent" means the Superintendent of Public Instruction or his or her designee.

NOTE: Authority cited: Sections 232 and 33031, Education Code; and Section 11138, Government Code. Reference: Sections 210, 220 and 260, Education Code; Sections 11135 and 11138, Government Code; 22 CCR 98343; and PL 100-259, March 22, 1988.

HISTORY

1. New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).

§ 4911. Government Code Definitions, Incorporation by Reference.

Those definitions of activities prohibited and persons protected from discrimination set forth in Chapters 2 and 3 of Division 8 of Title 22 of the California Code of Regulations (commencing with Section 98100) are incorporated into and made applicable to this Chapter as if fully set forth here.

NOTE: Authority cited: Sections 232 and 33031, Education Code; and Section 11138, Government Code. Reference: Section 260, Education Code; and Sections 11135 and 11138, Government Code.

HISTORY

1. New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).

§ 4912. Sex Equity Education Act Definitions, Incorporation by Reference.

Those definitions set forth in Articles 2 and 3 of Chapter 2 of Part 1 of Title 1 of the California Education Code (commencing with Section 210) are incorporated into and made applicable to this Chapter as if fully set forth here, specifically section 210 - "Educational institution", sec-

tion 211 - "Governing board", section 212 - "Sex", and section 212.5 - "Sexual harassment," section 213 - "State financial assistance" and section 214 - "State financial aid".

NOTE: Authority cited: Sections 232 and 33031, Education Code; and Section 11138, Government Code. Reference: Section 260, Education Code; and Sections 11135 and 11138, Government Code.

HISTORY

1. New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).

§ 4913. Prohibited Activities, Incorporation by Reference.

In addition to acts or omissions prohibited by other nondiscrimination laws or regulations, the acts specifically proscribed by Chapter 2 of Part 1 of Title 1 of the California Education Code (commencing with Section 210) are incorporated into and made applicable to this Chapter as if fully set forth here.

NOTE: Authority cited: Sections 232 and 33031, Education Code; and Section 11138, Government Code. Reference: Sections 220 and 230, Education Code; and Sections 11135 and 11138, Government Code.

HISTORY

1. New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).

Article 3. Nondiscrimination in Intramural, Interscholastic, or Extracurricular Athletics

§ 4920. General Prohibition.

No person shall on the basis of sex be excluded from participation in, be denied the benefits of, be denied equivalent opportunity in, or otherwise discriminated against in interscholastic or intramural athletics. Local agencies shall not provide athletics separately on such basis.

NOTE: Authority cited: Sections 232 and 33031, Education Code; and Section 11138, Government Code. Reference: Section 230, Education Code; and 34 CFR 106.

HISTORY

1. New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).

§ 4921. Separate Teams.

(a) Local agencies may provide single sex teams where selection for teams is based on competitive skills.

(b) When a local agency provides a team in a particular sport for members of one sex but provides no team in the same sport for members of the other sex, and athletic opportunities in the total program for that sex have previously been limited, members of the excluded sex must be allowed to try out for the team.

(c) Local agencies shall only participate in interscholastic competition under the auspices of athletic organizations that provide assurance that they do not discriminate on the basis of sex.

NOTE: Authority cited: Sections 232 and 33031, Education Code; and Section 11138, Government Code. Reference: Section 230, Education Code; and 34 CFR 106.

HISTORY

1. New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).

§ 4922. Equivalent Opportunity.

(a) For purposes of section 230(c) of the Education Code in determining whether equivalent opportunities are available to both sexes in athletic programs, the local agency shall consider, among other factors:

(i) Whether the selection of sports and other extracurricular and co-curricular competition effectively accommodate the interests and abilities of both sexes;

(ii) The provision of equipment and supplies;

(iii) Scheduling of games and practice times;

(iv) Travel and per diem allowances;

(v) Opportunities to receive coaching and academic tutoring;

(vi) Assignment and compensation of coaches and tutors;

(vii) Provision of locker rooms, practice and competitive facilities;

(viii) Provision of medical and training facilities and services;

(ix) Provision of housing and dining facilities and services;

(x) Publicity;