

R. DeWitt "Kyle" Kirwan
(310) 284-3830
kyle.kirwan@btlaw.com

www.btlaw.com

October 26, 2011

VIA MESSENGER, FACSIMILE AND EMAIL

John E. Deasy, Ph.D.
Office of Superintendent
333 S. Beaudry Ave., 24th Floor
Los Angeles, CA 90017

Re: Demand that the LAUSD Immediately Comply with the Stull Act

Dear Dr. Deasy:

We represent minor-students currently residing within the boundaries of the Los Angeles Unified School District (the "District" or "LAUSD"), the parents of these students, and other adults who have paid taxes for a school system that has chronically failed to comply with California law. Our clients seek to have the District immediately meet its obligations under the Stull Act, a forty year old law that is codified at California Education Code section 44660 *et seq.* (the "Stull Act").

In relevant part, the Stull Act requires that "[t]he governing board of each school district establish standards of expected pupil achievement at each grade level in each area of study." Cal. Educ. Code § 44662(a). The Stull Act requires further that "[t]he governing board of each school district . . . evaluate and assess certificated employee performance as it reasonably relates to . . . [t]he progress of pupils toward the standards established pursuant to subdivision (a) and, if applicable, the state adopted academic content standards as measured by state adopted criterion referenced assessments" Cal. Educ. Code § 44662(b)(1).

In the forty years since the California Legislature passed the Stull Act, the District has never evaluated its certificated personnel based upon the progress of pupils towards the standards established pursuant to Education Code section 44662(a) and, if applicable, the state adopted academic content standards as measured by the state adopted criterion referenced assessments; never reduced such evaluations to writing or added the evaluations to part of the permanent records of its certificated personnel; never reviewed with its certificated personnel the results of pupil progress as they relate to Stull Act evaluations; and never made specific recommendations on how certificated personnel with unsatisfactory ratings could improve their performance in order to achieve a higher level of pupil progress toward meeting established standards of expected pupil achievement. In short, the District has never complied with the Stull Act.

A child's right to a quality public education in California is a fundamental right fully guaranteed and protected by the California Constitution. *See, e.g., Butt v. State of California*, 4 Cal. 4th 668 (1002); *Serrano v. Priest*, 18 Cal. 3d 728, 765-66 (1976). This fundamental right can only be realized when the District and its superintendent are taking positive action to ensure that all certificated personnel under their charge are performing in a satisfactory manner. The legislatively-mandated mechanism by which the District and its superintendent are to ensure such performance is the Stull Act.

Sadly, compliance with the Stull Act has been deliberately evaded by a series of complicitous collective bargaining agreements between the District and the associations who represent the certificated personnel, and we understand that the District is in the process of once again negotiating collective bargaining agreements with these associations that will continue the forty year history of Stull Act non-compliance.

We understand further that the District has begun implementation of a pilot program, titled "Three-Year, Three-Phased Plan," that purports to take steps *towards* compliance with the Stull Act. While we appreciate that you are aware of the need to change district policy and practice with respect to teacher and administrator evaluations, this pilot program simply does not comply with the Stull Act. It is too little, too late.

At present, all of the prerequisites for the District's implementation of an evaluation system that fully complies with the Stull Act are in place: locally adopted academic standards; California adopted academic standards; various local measures of student progress; and criterion referenced assessments aligned to the state adopted content standards. Inexplicably, the District still refuses to implement the Stull Act in complete abdication of its responsibility to its students, their parents, and the taxpayers of the district. We demand that this change.

Specifically, we demand that the District take the following immediate action:

- Comply with the Stull Act by implementing a comprehensive program of evaluating all certificated employees' performance as it relates to specified mandated elements, including but not limited to, pupil progress as it reasonably relates to the standards of expected pupil achievement at each grade level in each area of study as established by the District and, if applicable, the state adopted academic content standards as measured by state adopted criterion-referenced assessments;
- Refrain from entering into any agreement with either UTLA or AALA that includes an evaluation system that does not fully comply with the Stull Act or that delays or otherwise prevents the District from implementing a comprehensive program of evaluating all certificated employees' performance as required by the Stull Act;
- Insofar as no certificated personnel have ever been evaluated by the District in conformity with and as required by the Stull Act, the District must immediately

evaluate, in full compliance with the Stull Act, *all* certificated personnel regardless of tenure status;

- Insofar as no personnel with permanent status who have been employed at least 10 years with the District have been evaluated by the District in conformity with and as required by the Stull Act, and therefore have no "previous evaluation" as contemplated by the Stull Act, the District must immediately revoke its consent to evaluate such personnel less frequently than every other year; and
- Confer with any employee who receives an unsatisfactory performance evaluation, make specific recommendations as to areas of improvement in the employee's performance, and endeavor to assist the employee in his or her performance, as required by Education Code section 44664(b).

As you can imagine, our clients are very interested in securing the District's agreement to immediately comply with the Stull Act. Our clients are prepared to force this issue through litigation, if necessary, to obtain a judicial mandate to compel the District to follow California law, and for preliminary and permanent injunctive relief against you, the District, the UTLA and AALA, and all members of the Board of Education if the District refuses to comply at once with the Stull Act's mandates. To this end, please notify me in writing before the close of business on Monday, October 31, 2011, whether the District will agree to immediately comply with the Stull Act and refrain from entering into any agreements with the UTLA or the AALA that would delay or otherwise prevent such compliance.

Very truly yours,



R. D. Kirwan

cc: Marguerite Lamotte (*via facsimile*)
Member, LAUSD Board of Education
Fax: (213) 241-8441

Monica Garcia (*via facsimile*)
Member, LAUSD Board of Education
Fax: (213) 241-8459

Tamar Galatzan (*via facsimile*)
Member, LAUSD Board of Education
Fax: (213) 241-8979

Steve Zimmer (*via facsimile*)
Member, LAUSD Board of Education
Fax: (213) 241-8453

Bennett Kayser (*via facsimile*)
Member, LAUSD Board of Education
Fax: (213) 241-8467

Nury Martinez (*via facsimile*)
Member, LAUSD Board of Education
Fax: (213) 241-8451

Richard Vladovic (*via facsimile*)
Member, LAUSD Board of Education
Fax: (213) 241-8452

Scott J. Witlin, Esq.
Levi W. Heath, Esq.
Barnes & Thornburg LLP