

Exploring the Limits of Entitlement: *Williams v. State of California*

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In August 2000, the American Civil Liberties Union filed a class-action lawsuit on behalf of school children against the state of California. The suit, *Williams v. State of California*, alleged that the state failed to exercise its constitutional obligation to provide equal access to education for all students in the state by allowing deficient facilities, uncredentialed teachers, and inadequate or insufficient instructional materials. A successful outcome for the plaintiffs would entail expansion of current boundaries of entitlement to a new standard that would establish constitutional entitlement to specific resources and a standard of state responsibility for oversight. In this article I examine whether the relief that plaintiffs seek pushes the definition of entitlement to areas beyond judicially manageable and constitutionally defensible standards.

The roles of lawyers, judges, and the courts in shaping American education policy has a history that dates to *Brown v. Board of Education* (XXXX). Advocates for various groups including women, racial and ethnic minorities, non-English speakers, children with handicaps and learning disabilities, among a host of others, have used the courts to challenge public policies and administrative practices that “reflect racist attitudes, repressive moralism, or bureaucratic callousness” (Kagan, 2001, p. XX). Among the most noteworthy changes in the system of education gover-

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nance over the past 40 years is legalization, defining education issues as legal issues to be resolved by lawyers and judges (Heubert, 1999; Kirp, 1988). Legal scholars also noted that although race lay at the base of the *Brown* decision, the justices' opinion went much beyond issues of race, "potentially enveloping within the judicial net all questions of equity in public schooling" (Kirp, 1988, p. 1). The principal objective of legalization was to secure basic universal education for all children and to achieve the large goal of educational equity by redefining concepts of educational entitlement.

Arguably, the most dramatic effect of legalization was the elaboration of procedural and substantive rights in just about all areas of education. *Goss v. Lopez* (1975), for instance, redefined the relationship between students and schools by effectively dismantling the concept of in loco parentis. *Tinker v. Des Moines* (1969) extended First Amendment rights to students with the court declaring that "students do not shed their constitutional rights at the school house door." *Lau v. Nichols* (1974) required schools to "'open the door to instruction' for students ... [with] linguistic deficiencies." The *PARC v. Commonwealth* (1971) and *Mills v. Board of Education* (1972) cases established a constitutional standard for education of disabled students. *Serrano v. Priest* (1974) in California established an equal protection standard for school finance.

In August 2000, the American Civil Liberties Union (ACLU)¹ filed a class-action lawsuit on behalf of school children against the state of California. The suit, *Williams v. State of California* (2000a), alleges that the state failed to honor its constitutional responsibility for providing equal access to education to all students in the state. According to plaintiffs, "there are too many schools in the State in which students face intolerably unequal conditions: pervasive over-crowding, absences of textbooks and trained teachers, and dismal and decaying school facilities" (p. 1). The suit charges that "in the face of repeated warning about shockingly poor school conditions and repeated calls for action, the State has failed to respond with remedies that are sufficient to cure the inequitable conditions" (p. 1). The legal basis for the case is that "the State holds a non-delegable constitutional duty to ensure that public school students in the State of California enjoy fundamentally equal educational opportunities" (*Williams v. State of California*, 2003, p. 3). According to plaintiffs,

¹In addition to the ACLU, other firms joined the suit: Morrison Foerster LLP, the ACLU Foundation of Northern California, and Public Advocates Inc. The state of California retained the firm of O'Melvyny and Myers. The state also countersued school districts named in the suit.

the state has been derelict in performing that duty. Specifically, the suit charges that

Tens of thousands of children attending public schools located throughout the State of California are being deprived of basic educational opportunities available to more privileged children attending the majority of the State's public schools. State law requires students to attend school. However, all too many California school children must go to schools that shock the conscience. Those schools lack the bare essentials required of a free and common school education that the majority of students throughout the State enjoy: trained teachers, necessary educational supplies, classrooms, even seats in classrooms, and facilities that meet basic health and safety standards. Students must therefore attempt to learn without books and sometimes without any teachers, and in schools that lack functioning heating or air conditioning systems, that lack sufficient numbers of functioning toilets, and that are infested with vermin, including rats, mice, and cockroaches. These appalling conditions in California public schools represent extreme departures from accepted educational standards and yet they have persisted for years and have worsened over time. Students who are forced to attend schools with these conditions are deprived of essential educational opportunities to learn. Plaintiffs bring this suit in an effort to ensure that their schools meet basic minimal educational norms. (*Williams v. State of California*, 2000a, p. 2)

The state's alleged dereliction of duty is alleged to be rooted in its system of oversight, which, according to the suit, has three major failings: (a) It fails to prevent unequal distribution of educational resources, (b) it fails to detect unequal distribution of resources, and (c) it fails to remedy unequal distribution of resources. The case focused on three areas of resource allocation: teachers, textbooks, and school facilities. Plaintiffs argued that there were systematic disparities in the distribution of these resources and that these disparities denied large numbers of students access to equal education. These failings and the harm they cause led plaintiffs to propose remedies, which they argued would improve the current system of state oversight and would eliminate the conditions that gave rise to the suit. Remedies were based on the creation of (a) statewide standards regarding teacher qualifications, facilities, and textbooks; (b) a system of monitoring districts and schools for adherence to state standards; and (c) a system of interventions and sanctions for schools and districts that are found noncompliant with state standards (*Williams v. State of California*, 2003, pp. 324–361).

Although *Williams* (2000a) had its legal antecedents in the *Serrano* (1974) and *Butt v. Honig* (1991) decisions, it is different from both traditional school finance equity cases and the “new wave”² of school finance adequacy cases in that it is not about the equity or adequacy of resources per se, but about the state’s system of oversight for education—whether the state has a system of oversight and assures students adequate resources to benefit from the education provided them. According to the presiding judge, “this case will deal with the *management and oversight system* that the state has in place to determine if they are legally adequate and whether they are being adequately implemented” (*Williams v. State of California*, 2000b, p. 3). Consequently, plaintiffs’ proposed remedies in the case do not argue for reallocation or equalization of educational resources but for the creation of a state regulatory system that would ensure adequate resources to all students. A successful outcome in the case for plaintiffs would entail the expansion of current boundaries of entitlement to a new standard that would establish constitutional entitlement to specific resources and a standard of state responsibility for oversight.

The *Williams* (2000a) case raised important questions regarding the imposition of judicially manageable standards related to teacher qualifications, instructional materials, and facilities. In particular, the case raised questions about a process of adversarial legalism (Kagan, 2001) to produce better educational outcomes for students. In the history of school finance litigation, its principal goal has been to abolish unreasonable governmental barriers to equal opportunity. However, at what point do teacher qualifications, the quality and supply of instructional materials, and the conditions of school facilities deprive students of their constitutional entitlement to education? At what point are students denied access to education services because of these conditions? How might courts define a constitutionally defensible standard for a “good” teacher? Finally, are the proposed remedies likely to improve the state’s system of oversight, or will they simply add to the complexity of the existing system of school oversight and governance? As I argue later, the suit—as much as it deals with the system of oversight and governance of the system of education—cannot be taken out of the political and policy contexts that shape the current system of education oversight and governance.

As much as the *Williams* (2000a) case was about the structure of state governance and oversight, I first examine the political and policy context of education in California and its impact on resource allocation—the factors that affect resource allocation related to teachers, instructional materi-

²See, generally, Heise (1995), Minorini and Sugarman (1999), and Versteegen and Knoeppel (1998).

als, and facilities. I then examine the remedies proposed by plaintiffs. Finally, I argue that proposed remedies are unnecessary and redundant and that redefining entitlement in terms of the state's obligation for oversight pushes the definition of entitlement to areas beyond judicially manageable and constitutionally defensible standards. Although one may agree with the normative goals for guaranteeing an adequate level of education for all students, turning normative goals into constitutional principles is a difficult undertaking. Redefining standards of educational equity and opportunity, as proposed by plaintiffs in the *Williams* case, are not likely to be realized through legalization but through political and administrative processes.

The Political and Policy Context for K–12 Education Oversight

Historically, responsibility for provision of education services in California, as in most states, has been broadly delegated to local school districts. In the State Constitutional Convention in 1879, the issue regarding public education that prompted the most prolonged debate was how specific the state constitution should be regarding education. After much debate, convention delegates voted to keep constitutional provisions sparse to give the legislature flexibility to adjust the system to changing conditions as necessary. Delegates also realized that the state's size and variety required a system that could accommodate differences. Delegates eschewed a strong, centralized state role in the oversight of education in deference to a system of local decision making (*Debates and Proceedings*, 1880).

Created as legal entities, school districts were delegated authority to levy taxes, enter into contracts, and enforce state law as it applies to the operation of schools. Accountability for education was synonymous with political accountability. School board members answered to local electorates. If a community was unhappy with its schools, it could elect a new board, which then might replace the existing school superintendent. The scope and quality of educational services in a district was primarily determined by local preferences for education and the capacity to pay for them.

Although local districts were given broad authority to shape the basket of education goods in their communities (Tiebout, 1956), the state controlled districts through several means. The most basic of these were minimum standards, below which different kinds of school operations could not fall. Based on the rationale that "the general welfare requires a basic educational opportunity for all children" (*Serrano v. Priest*, 1971, p. XX; *Serrano II*, 1976), it justified requiring pupils to attend schools a minimum

numbers of minutes each day for a minimum number of days per year as well as specifying what courses should be taught and what kind of training teachers needed to teach them (Policy Analysis for California Education, 1995). The state required districts to levy a certain level of tax and to pay its teachers a minimum salary.

However, a series of state policy actions, voter initiatives, and court decisions eroded the long-standing tradition of local control and dispersed authority among multiple agencies and levels of government. The cumulative impact of these events was twofold. It increasingly shifted decision making from local districts to the state, and it dispersed authority among an ever-growing number of players. *Centralization* of authority did not lead to *concentration* of authority. Rather than integrating authority, policymakers dispersed authority among various agencies. Currently, there are separate governing boards for the state university and community colleges. Teacher licensing and certification is under its own commission. For much of the time since Bill Honig's tenure as Superintendent of Public Instruction (SPI) during the 1980s, relations between the State Board of Education and the SPI have been highly contentious. As governors have come to compete with the SPI for control over public education, the power of the state board has risen at the expense of the superintendent's. During her tenure as state SPI, Delaine Eastin (~~1998~~) had little or no authority, was generally excluded from state-level policymaking, and was not regarded as a major force in state education politics or policy. The second effect of state policy activism has been the attenuation of local authority and diminution of local capacity to deliver educational services. Collective bargaining, the increasing share of categorical funding relative to block-grant funding, and increasing legislative directives to districts not only placed severe limitations on local discretion but also made local decision making vastly more complicated and expensive. Authority was not only dispersed at the local level but also among other actors such as the courts and the California Public Employees Relations Board.

The major policy impacts on school governance over the past 30 years are discussed next.

The Serrano v. Priest (~~1974~~) Decision

Historically, schools were supported primarily by local property taxes. Prior to 1979, state law set a base rate of property taxation to support public education. Voters in local districts could increase the rate if they wished to provide additional funding. However, large variations among communities in property wealth (measured by assessed valuation) meant that the amount of revenue raised for a given tax rate also varied considerably. As a

result, low-wealth districts had to tax themselves at higher rates than wealthier districts to generate the same amount of revenue. The *Serrano* case challenged the constitutionality of the existing school finance system on equal protection grounds. The court agreed and directed the legislature to equalize funding among districts. The legislature's solution was AB 65 in 1977. By means of complex equalization formulas, the measure intended to meet the *Serrano* mandate. However, the effects of AB 65 were superseded by Proposition 13.

Proposition 13

This constitutional amendment passed by voters in 1978 rolled back property taxes by 60%, limited the property tax rate to 1% of the assessed value, and held annual property tax increases to 2%. Any new taxes had to be approved by two thirds of the voters. (This last provision was modified in 2001 when the state's voters approved an initiative that reduced the required voting majority to 55% for local bond elections.) Its impact was to create a state school finance system. Combined with the limitations imposed on districts by *Serrano* (1974), district capacity to generate funds for education is now for all practical purposes nonexistent. ~~According to the Legislative Analyst,~~ Proposition 13 eroded local authority and capacity in several ways. It shifted leadership to the state. Both funding and policy decisions about education became the responsibility of the state. Local officials no longer turned to their local communities for support (and no longer did local communities hold local officials accountable for results), as most decisions shifted to Sacramento.

Proposition 98

Passed by voters in 1988, Proposition 98 assigned to K–12 and community colleges a constitutionally protected portion of the state budget by guaranteeing a minimum level of funding. The measure's intent was to provide stability and predictability in K–12 and community college funding from year to year. Although it has provided a guaranteed base, it has also become a ceiling for K–12 and community college funding. Perhaps its greatest impact, which is discussed more fully later, has been to use the state budget as a policy tool. Because policymakers do not know how much money will be available for the following year's budget, and because 40% of the money has to go to K–12 and community colleges, there is a last-minute scramble to spend money, as illustrated with the class-size reduction measure. Rather than putting the money into general revenues for schools, legislators increasingly targeted funds for special purposes. Although such decisions may have significant impacts on schools, there is

little public discussion about them. The senate and assembly leadership of both parties, and the governor, generally make these decisions.

Collective Bargaining

The legislature authorized collective bargaining for school employees in 1976. Under previous provisions established by the Winton Act in 1965, districts were simply required to “meet and confer” with employee organizations. Collective bargaining greatly expanded teacher unions’ rights to negotiate binding contracts with districts on a variety of matters. They include wages, hours, and other terms and conditions of employment such as employee benefits, teacher transfer policies, maximum class sizes, and evaluation procedures.³ According to the California Commission for Educational Quality, California already had statutes in place regulating various employment-related matters such as state requirements for teacher tenure and dismissal, layoff notification, and maximum class size. These mandates were not eliminated when collective bargaining was enacted. Instead, existing statutes created a floor for the beginning of bargaining in districts. Moreover, the Rodda Act’s (~~XXyearXX~~) original provisions relating to terms of employment and working conditions have been expanded through appeals processes and new laws so that its scope has expanded considerably. Collective bargaining contracts now typically cover a wide range of topics, most of which affect local capacity for service delivery. Collective bargaining rights related to compensation include cost-of-living adjustments, salary schedules, pay for specific duties, minimum teacher salaries, mentor teacher selection processes, tuition reimbursement, and travel expenses. Other areas covered by collective bargaining include benefits; hours and days of work; leaves; early retirement and retirement benefits; job assignment; evaluation procedures and remediation; grievance procedures, appeal processes, mediations, and arbitrations; discipline procedures and criteria; layoff and reemployment procedures; organization security; and a variety of other topics (EdSource, 1999).

According to Policy Analysis for California Education (PACE; 1995), “local teacher bargaining contracts centralized decision authority within districts, but also dispersed authority to legislatures, the courts, and public administrative agencies like the California Public Employee Relations Board” (p. 81). For districts, collective bargaining means that they *share* power with unions over a wide range of decisions that affect district educational policies and the distribution of district resources.

³See *California Government Code*, Article 4, § 3543–3543.8.

Categorical Funding

Traditionally, the principal forms of state subventions to schools was through unrestricted, block-grant funds. This meant that local boards had considerable discretion over the use of state funds. Over the past 15 years, and especially in the last 5 years, the legislature has shifted an increasingly larger share of state monies into categorical grants. These are restricted funds that may only be used for special purposes. In 1980, approximately 13% of all state subventions to school districts were restricted, and most of that was for three programs: special education, Title I, and Economic Impact Aid. In that year, there were also 19 categorically funded programs. Currently, there are roughly 124 categorically funded state programs, and such funds represent about 30% of per-pupil funding (Timar, 2004).

Increased reliance on categorical funding affects school districts in several specific ways. It has placed greater restrictions on districts regarding the use of state funds. It also means that as the share of categorical funding increases, education finance becomes increasingly supply driven: Expenditures are not necessarily driven by local needs but by the availability of funds. Categorical funding, moreover, usually comes with a list of programmatic and reporting requirements. Detailed proscriptions about parent advisory committees (many schools have four or five), reporting requirements, and fund expenditures have resulted in legislative micromanagement of districts.

More generally and more insidiously, the rise of categorical programs has balkanized schools and school districts. The proliferation of categorical funding has turned schools into collections of programs instead of coherent organizations. As the Coordinated Compliance Reviews conducted by the California Department of Education (CDE) show, schools and the state are mostly concerned with fairly narrow compliance issues while they may overlook the health of the organization as a whole. They also tend to encourage strict regulatory compliance over professional judgment and replace school goals with narrow programmatic goals (Kagan, 1986; Kirp & Jensen, 1986; Timar, 1994).

Federal Education Policy

Federal education policy amplifies the effects of state categorical funding. Most federal funds come with many regulations regarding their use, state which students are eligible to participate in federally funded programs, and under what conditions. No detail is too small to escape regulatory scrutiny. Schools, for example, were told that they could use federal Title I monies to carpet classroom floors if having students sitting on the floor was specifically called for in a teacher's lesson plans. They could not

use federal funds for carpeting if students just happened to sit on the floor in the course of the day. Reauthorization of Title I in the fall of 2001—the No Child Left Behind Act—contained provisions that further invaded local decision making. States and schools are required to develop academic standards for all students and are required to test students. Low-performing schools that fail to show improvement over time may be “reconstituted”—teachers and principals may be replaced or, conceivably, the schools could be shut down. The law also requires states to certify that all teachers are “highly qualified.”

Increased Legislative Activism

For the past 2 decades, the legislature has routinely enacted literally hundreds of measures dealing with K–12 education. However, the pace of legislative activity has intensified over the past 6 to 7 years. PACE (1995) noted that not only were initiatives of the past 7 years “unprecedented in terms of the consensus they represented among an otherwise divisive body” (p. 81), but also indicated an unusual level of intervention and top-down control by state-elected officials in the affairs of curriculum policy.⁴

Finding “the State”

Some analysts have described the 1990s as “a tumultuous decade for public education in California” (EdSource, 1999, p. ~~XX~~). Over the course of the decade, teachers and local school officials have had to manage education programs while attempting to respond to an outpouring of new legislative initiatives. As analysts pointed out, the state has introduced numerous major new reforms and programs; some are aligned to larger goals, whereas others are not (p. 2). The major thrust of these reforms has been under the heading of “standards-based reform,” most of which, although not all, have been introduced since 1995. The theory of standards-based reform is that the state adopts curriculum standards that, in turn, align with curriculum frameworks; student assessments; school accountability; and teacher training, professional development, compensation, and evaluation. The state is now on its third state assessment instrument in just over 10 years. The California Assessment Program (CAP), which had been in place since 1983, came to a halt in 1991 when Governor Deukmejian cut program funding just prior to leaving office. State policymakers re-

⁴California statute specifies that reading must be taught by means of phonics.

sponded by developing the California Learning Assessment System (CLAS) to replace it. Their goal was to create a state testing system that not only assessed individual student progress but was also based on the state's curriculum frameworks. CLAS proved to be short lived. A combination of conservative backlash to test content, negative research evaluations about the test's technical quality, and abysmally low scores on the first round of assessment resulted in Governor Wilson vetoing funding for CLAS. In 1996–97, districts were free to select their own tests. Policymakers soon realized, however, that it was difficult to compare student performance across schools and districts when schools used different tests. In 1997–98, the state adopted the Standardized Testing and Reporting Program, which used the Stanford 9 test. Over time, it has been augmented to measure state standards, which, although central to the state's education reform portfolio, were not assessed in the Stanford 9 (a nationally normed reference-based test). Stanford 9 has been replaced by the CAP6, which incorporates assessment of state standards.

Over the past 5 years, schools have been flooded with new programs and mandates. The state now bans social promotion and requires schools to provide remedial instruction for students during the summer. Students must pass a high school exit exam to receive a diploma, although implementation has been delayed due to the high rate of failure on the examination. The state Board of Education requires all students to take algebra in the 8th grade. These requirements come on top of class-size reductions, high-stakes accountability, and increasing restrictions in funding. At the same time, the demographic context of education is changing rapidly: The student population is becoming more diverse, many students are not proficient in English, and some districts face acute teacher and administrator shortages.

Although some individuals are critical of the substance of legislative initiatives, others are critical of the legislative process. Increasingly, major decisions about education are the products of last-minute deals made by a handful of people during budget negotiations. For instance, the Class Size Reduction Program enacted in 1996 to reduce class size in kindergarten and Grades 1 through 3 to not more than 20 pupils per teacher was introduced and passed into law in 1 day.⁵ The statute appropriated \$1.5 billion to school districts that participated in the program in the 1997–98 school year. It proved to be a politically popular measure. Schools liked it because it provided them \$800 in per-pupil funding for participating grades. The

⁵SB 1777, O'Connell (Chapter 163, *Statutes of 1996*). An earlier version of the same measure was contained in SB 1414, Greene. However, the latter became a measure to facilities to assist school districts with facilities-related costs associated with class-size reduction in K–3.

public and teachers liked it because it reduced class size from an average of 30 to 20. Class-size reduction also created a huge and sudden demand for teachers. Because many districts were already having difficulties in staffing classes with credentialed teachers, the measure exacerbated shortages for those districts. SPI, Delaine Eastin (1998), although an enthusiastic supporter of class-size reduction, tempered her enthusiasm with two concerns. One concerned the effectiveness of the \$1.5 billion program if qualified teachers could not be found to staff those smaller classes. She estimated that the state might need over 18,000 new K–12 teachers at a time when there were already about 21,000 teachers with emergency credentials. She went on to state:

Clearly, we would be alarmed if 21,000 doctors were working with emergency licenses, and we should be equally concerned about the training our teachers receive. Smaller classes are one important piece of the equation for a successful program, but skilled teachers are essential if we are to see real progress in student achievement based on challenging standards for all students. (~~California State Legislature, personal communication, March 1998~~)

The trajectory of education governance over the past 20 years has decidedly shifted toward the state and federal government. Increasingly, decisions traditionally left to local communities and school officials are now made at higher levels. Therefore, with inexorably increasing numbers of state players, it is difficult to know just who the “state” is or who in the state is responsible for the overall health of the state’s education system. Categorical programs, collective bargaining, and a host of state and federal mandates have eroded local authority for resource allocation by shifting authority to more distant reaches of government. Therefore, although state oversight has become increasingly dispersed as the educational policy sphere has become more complex, local officials have much less discretion about the delivery of instructional services and the resources necessary to provide them.

School Finance and Control of Resource Allocation

Changes in state and local governance are perhaps most dramatically exemplified in the financing of schools. Until the late 1970s, local property tax revenues comprised the major share of school funding. The state’s role in direct fiscal support to schools was a limited one. It guaranteed a funding floor for districts (as long as districts taxed themselves at a state-speci-

fied minimum level) and provided additional dollars for extraordinary costs (e.g., for transportation in rural areas). In 1969–70, local property taxes provided, on average, 60% of K–12 funding, whereas the state provided 34%. Federal dollars made up the remaining 6%. Most important, nearly 90% were general purpose or unrestricted, which meant that districts had a free hand in deciding how to allocate revenues.

The present school finance system is radically different. On average, schools receive 60% of their funding from the state, 28% from local sources, 10% from the federal government, and 2% from the state lottery. Moreover, of the 60% that comes from the state, 40% is restricted; this means that money must be used only for state-specified purposes. How much money a school district receives is fixed in law. Although districts do have authority to augment their revenues through parcel taxes, only a handful have succeeded in doing so. For all practical purposes, California has a state-financed education system.

In the post–Proposition 13 school finance system, a district’s revenues are determined not by local fiscal capacity or local preference but by the state legislature. How much schools have to spend and, increasingly, how they spend it is determined at the state (not the local) level and is dependent on a variety of factors. Among them are state fiscal capacity, statewide voter preferences for education spending, and the degree to which education can compete with other funding sectors. As school finance decision making shifts to the state arena, it engages new actors—legislators and politically mobilized interests with access to them. Reflecting the new politics of school finance in California is the inexorable expansion of categorical or restricted funding—in quantity and as a share of total funding. Increasingly, decisions about local expenditures—how much to spend on textbooks, staff development, or instructional materials, for instance—are made at the state level.

The most dramatic change in the state’s school finance system has been in the growth of categorical (restricted) funding. In 1980, there were 19 state and federal categorically funded education programs in California. By 2002, there were 124. Moreover, in 1980–81 about 13% of funding was restricted, most of it going for special education costs. The remaining 87% of funding was unrestricted, to be spent at the discretion of districts. In 2000–01, nearly 33% of school funding was restricted. Roughly 40% of state money to schools is in the form of categorical funding. Between 1980 and 2000, average per-pupil funding increased by 15% (in Year 2000 constant dollars), from \$5,422 to \$6,232. Over that period, the restricted share of those dollars increased from \$705 to \$1,870 (a 165% increase), whereas unrestricted share declined by nearly 8%, from \$4,717 to \$4,362. For a class of 30 students, that represents a decline in discretionary spending of \$10,650.

If the share of restricted to nonrestricted funding had remained the same in 2000 as it was in 1980, it would amount to nearly \$32,000 per class of 30 students.

In California, only a handful of districts have the capacity to generate significant local revenues. Some districts, about 16, have succeeded in passing parcel taxes to support schools. Other districts, approximately 64, are so-called basic aid districts, which means that they exceed their state-imposed revenue limits. For the remaining 900 or so districts in the state, their revenues are determined by the annual state budget. The combined lack of local capacity to generate additional revenues and the increasingly prescriptive nature of state funding, schools have little control over spending. In addition, salaries and benefits compose, on average, 84% of district expenditures.

Since Proposition 13, the state has had to compensate for the decline in property tax revenues. Consequently, K–12 funding now competes with other state and local government activities: transportation, health and welfare, safety, higher education, natural resources, energy, and a host of others. Although it is true that California has slipped from its once preeminent position as national leader in school funding, given the fact that education finance is now a zero-sum game, K–12 has managed to hang on to its share of funding. As noted earlier, per-pupil funding in California increased by 15% in constant dollars. Over the same period, teacher salaries increased 25% in constant dollars, whereas median family income rose 16%.

The increase in overall funding is reflected in changes in specific funding areas. Professional development is an area of funding that has grown significantly over the past 20 years. Between 1983 and 1986, it grew from \$3 million annually to over \$100 million. Between 1997–98 and 2001, funding to the University of California for K–12 staff development increased from \$32 million to over \$230 million. In 2001–02, the state budget for K–12 included \$514 million for various staff development programs. This figure does not include the funding available for staff development that is embedded in various school accountability provisions that total to just under \$2 billion.

Senate Bill 813 in 1983–84 provided, for the first time, an annual apportionment of \$14.41 (\$26.25 in Year 2000 dollars) per pupil in Grades 9 through 12 for purchase of instructional materials. Legislation specifically required that these funds be used by districts to supplement, not supplant, instructional materials purchases. Previously, state funding for textbook purchases was provided only for pupils in Grades K–8, at a statutory rate of \$21.18 (\$37.70 in Year 2000 dollars) per pupil. High schools had funded instructional materials out of their regular apportionments. For the 2000–01 school year, the apportionment was \$36 per elementary student

and \$13 per high school student. In constant dollars, funding for instructional materials over the period declined by 4.5% for elementary students and by 50% for high school students. It is important to note, however, direct state support for instructional materials and supplies pays for only a fraction of actual school expenditures. For 2000–01, average expenditures by schools for textbooks (\$83), other instructional textbooks (\$33), instructional materials (\$127), and other supplies (\$105) totaled to \$348 per pupil (Legislative Analyst, 1984).

The data suggest that over a 20-year period current funding for K–12 education increased in real terms. However, that increase was mostly absorbed by teacher costs—salaries and professional development.

In addition to increasing current funding, the state has also increased funding for school facilities construction and modernization. Between 1990 and 2000, voters approved \$15.8 billion in new construction and modernization bonds for K–12 education. Assembly Bill 16 in 2002 authorized a \$10 billion state bond measure that voters approved in March 2004. The measure adds \$5.26 billion for new facilities construction, \$2.25 billion for modernization, and \$2.44 billion for the 2004 Critically Overcrowded Schools Facilities Account. With passage of the latest bond measure, the state will have authorized nearly \$26 billion in funding for construction and renovation. In 2000, voters approved Proposition 39, which lowered the voter approval requirement for local bond elections to 55%. This means that the local match that is required to apply for state funds will be easier for districts to meet. It also means that the \$10 billion in proposed funding would be matched by another \$10 billion of local funding. Given the state and local investment in capital outlay and renovation, it is difficult to conclude that the state is not making a concerted effort to provide funding to add new facilities and improve existing facilities.

The Importance of Policy Continuity and Stability

Plaintiffs in the *Williams* (2003) case pointed to North Carolina and Connecticut as states that have engineered significant changes in student achievement across all socioeconomic status (SES) groups (p. 334). They argued that both states made major investments in education chiefly by increasing teacher salaries, funding professional development, and improving preservice training of teachers. As a result, “North Carolina has posted the largest student achievement gains in mathematics and reading of any state in the nation ” (p. 334). Connecticut, similarly, has also “made significant progress, becoming the highest achieving state in the nation, despite

and increase in the proportion of low-income and limited-English proficient students during that time" (p. 334).

A study in 1998 by RAND researchers for the National Education Goals Panel entitled, *Exploring Rapid Achievement Gains in North Carolina and Texas*, came to very different conclusions regarding the reasons for high levels of achievement. According to that study, Texas and North Carolina made greater combined student achievement gains in math and reading on the National Assessment in Educational Progress in 1992–1996 than any other states. According to the study, these gains were "significant and sustained." In addition, the two states "made significant improvement on more measures of progress toward National Education Goals than any other states" (Grissmer & Flannagan, 1998, p. ~~XX~~). In the study's preface, the researchers state that achievement gains were found *not*⁶ to be due to increased real per-pupil spending, reduced teacher–pupil ratios (class size), or having more teachers with advanced degrees or more years of experience. Researchers attribute achievement growth to leadership from the business community, political leadership, and continuity and stability of reform policies over time. Finally, the key school reform strategies were statewide academic standards, holding all students to the same standards, statewide assessments closely linked to academic standards, accountability systems with consequences for results, increased local flexibility for administrators and teachers, systems and data for monitoring improvement, shifting resources to schools with more disadvantaged students, and an infrastructure to sustain reform (Grissmer & Flannagan, 1998, p. ii).

A study of mathematics and science reform in eight states conducted for the National Science Foundation in 1996 drew similar conclusions regarding the characteristics of successful school reform efforts⁷ (Timar, Kirst, & Kirp, 1995). The study found that Connecticut had, indeed, made considerable gains in student achievement—more than the other states in the study. And, most important, researchers attributed Connecticut's success to strong and consistent policy leadership, the autonomy of the state education agency to develop and sustain a long-term reform plan, the lack of legislative interference, the continuity and stability of reform policies over time, and statewide assessments that were closely aligned with standards. As plaintiffs pointed out, Connecticut also had a massive infusion of funds for teacher salaries. As a result, teacher salaries in Connecticut consistently rank among the top five in the nation (after cost-of-living adjustments), often alternating with California for first- or second-highest teacher salaries in the nation.

⁶This emphasis was in the original.

⁷Study conducted under a grant from the National Science Foundation.

State strategies to improve schools in California are similar to the strategies of other states. Reform policies have targeted professional development, higher salaries, preservice and credentialing, and state standards and assessments. A striking difference between California and other states is the instability of the policy environment in which education operates. As described earlier, there is little stability, continuity, or consistent leadership. The state has adopted and rejected at least three assessment instruments. New programs are enacted with little time for schools to prepare for their implementation. The legislature increasingly micromanages schools from Sacramento. Schools and districts have virtually no flexibility for resource allocation. Those critical ingredients for success that have characterized states like Connecticut and North Carolina are sorely missing from California.

Revenue and Expenditure Patterns Among Districts

If one compares expenditures and funding in low-performance districts to the state average and to high-performing schools, it is not readily apparent what accounts for variability among schools and districts in instructional materials, facilities, and teacher experiences. Table 1 displays differences in district expenditures and total revenue sources for what can be termed *high-need* districts, *low-need* districts, and the average of all districts.⁸

The table shows differences in expenditures and revenues among average, high-need and low-performing, and low-need and high-performing districts. Students in high-need districts receive over \$100 more per pupil in total revenues than the state average and just under \$500 more than the low-need districts. However, although low-performing district spending on certificated employees is close to the state average, high-performing district spending is slightly more than \$300 per pupil higher. High-performing districts also spend almost \$100 less per pupil than the state average and \$200 less than low-performing districts.

Plaintiffs argued that states that have shown the highest improvement for all, including low-SES students, have targeted additional state funds to

⁸High need is defined as those districts (often cited by plaintiffs) that are in the bottom quartile of performance based on the average Academic Performance Index (API), in the top quartile of percentage of teachers with emergency credentials, and in the bottom quartile of SES. Low need is top quartile of API, bottom quartile of percentage of teachers with emergency credentials, and top quartile of SES. (Data are for 2001–02.) The SES or “need” index combines several district indicators: the percentage of African American and Hispanic students, the percentage of English learners, the percentage of students whose parents qualify for CalWorks, the percentage of students eligible for free or reduced price lunch, and average parent education level. These variables are scaled, added, and weighted to give more significance to the combination of all variables.

Table 1

Comparison of Revenues and Expenditures by High-Need/Low-Performing and by Low-Need/High-Performing Districts

<i>Variable</i>	<i>State Average</i>	<i>High Need</i>	<i>Low Need</i>
Revenues			
Per-pupil total revenues	\$7,823	\$7,959	\$7,465
Categorical funds	\$1,556	\$1,864	\$1,298
State revenue limit	\$5,129	\$4,803	\$4,891
Expenditures			
Capital outlay	\$176	\$199	\$114
Services	\$868	\$890	\$847
Books and supplies	\$476	\$568	\$359
Benefits	\$1,130	\$1,137	\$996
Classified salaries	\$1,224	\$1,211	\$1,084
Certificated salaries	\$3,466	\$3,417	\$3,763

Note. High need is defined as those districts (often cited by plaintiffs) that are in the bottom quartile of performance based on average Academic Performance Index, in the top quartile of percentage of teachers with emergency credentials, and in the bottom quartile of socio-economic status (SES). Low need is top quartile of Academic Performance Index, bottom quartile of percentage of teachers with emergency credentials, and top quartile of SES. (Data are for 2001–02). The SES, or Need, index combines several district indicators: the percentage of African American and Hispanic students, the percentage of English learners, the percentage of students whose parents qualify for CalWorks, the percentage of students eligible for free or reduced lunch, and average parent education level. These variables are scaled, added, and weighted to give more significance to the combination of all variables.

low-SES, low-performing districts. The data in Table 1 show a strong redistributive effect for state revenues. As noted, total per-pupil revenues in low-SES, low-performing districts receive, on average, slightly \$100 above the state average but over \$400 above high-SES, high-performing districts. High-need districts receive \$566 more in categorical funds than low-need districts. On average, districts' revenue limits are \$2,924 local revenue and \$2,606 state apportionments. For high-need districts, the comparable figures are \$1,509 and \$3,404, whereas for low-need districts, comparable figures are \$3,574 and \$1,253. Taken together, high-need, low-performing schools receive, on average, just over \$3,000 more in state revenues than low-need, high performing districts. Based on these data, it is difficult to conclude that California has not made a substantial financial effort to aid high-need districts.⁹

⁹It is arguable whether school funding is adequate in absolute terms; the data show that high-need schools are not disadvantaged with respect to state support in comparison to average and low-need schools.

Will Plaintiffs' Remedies Result in Higher Achievement for Low-Income Students in Low-Performing Schools?

Plaintiffs argued that an oversight system comprised of standards, compliance monitoring, and interventions and sanctions regarding instructional materials, qualified teachers, and facilities is essential and will, in fact, create a more equitable system of education. This system of oversight, moreover, would be modeled on the Fiscal Crisis Management Assistance Team concept, which was created by AB 1200 (California State Assembly Bill 1200) in the wake of Richmond Unified School District's fiscal collapse. In the following section I examine those proposed remedies.

Standards Regarding Instructional Materials

Although it is reasonable and desirable that each child shall have a textbook that is in good condition, reasonably current, and available for a student to complete homework, the reasons why some students do not have access to such books are not well documented. There are cases of teachers not using new textbooks because they prefer the older ones, ones on which they have built lesson plans. Books are also destroyed and mutilated. In some instances, it may be that schools have deferred purchasing textbooks while waiting to implement new standards; in other instances, schools may have deferred because they have other short-term funding priorities. Elk Grove Unified School District, for example, estimates that adoption of a new language arts series for the district cost approximately \$7 million with an additional \$2 to \$2.5 million for professional development costs associated with the adoption. As Table 1 shows, the reasons do not appear to be related to expenditures, as low-performing districts spend nearly \$100 per pupil more than the state average and about \$200 more than high-performing districts.

As plaintiffs noted, the Education Code already regulates textbooks and instructional materials. California Education Code Sections 60117–60119, (a) 1 state

The governing board shall hold a public hearing or hearings at which the governing board shall encourage participation by parents, teachers, members of the community interested in the affairs of the school district, and bargaining unit leaders, and shall make a determination, through a resolution, as to whether each pupil in each school in the district has, or will have prior to the end of that fiscal year, sufficient textbooks or instructional materials, or both, in each subject that are consis-

tent with the content and cycles of the curriculum framework adopted by the state board.

State law further requires districts to take specific remedial actions if it is determined that there are insufficient textbooks and materials. Plaintiffs' remedies would simply duplicate existing law.

Standards Regarding Qualified Teachers

Plaintiffs' standards regarding qualified teachers would require that at least 80% of teachers at each school and at least 80% of teachers on each track with multitrack programs be fully credentialed and that those teaching English language learners be specially authorized to teach them. In addition, low-performing schools should be prohibited from having more than the state average proportion of teachers without preliminary or clear credentials.

The remedy raises several questions. First among them is why 80%? Is there something particularly compelling about that percentage of credentialed teachers? Is it based on some measure of school effectiveness? The 80% requirement is problematic also because federal law, No Child Left Behind (2001), requires *all* teachers to be fully credentialed and certified in their subject areas. California's State Board of Education has developed a plan for implementation of the federal law by 2005–06 (NCLB Teacher Requirements Resource Guide, 2003).

The second question regards existing capacity to meet the requirement. For schools to meet the 80% requirement, 442 schools in 62 districts would have to hire approximately 4,500 teachers. To meet the state average requirement—9.5% in 2001–02—1,710 schools in 122 districts would have to find approximately 13,000 teachers.¹⁰ It is difficult to imagine where those teachers could be found. Most likely, many would come from the existing pool of teachers with emergency credentials who are simultaneously enrolled in teacher credentialing programs.

A further problem with plaintiffs' remedies is that they are based on several questionable assumptions. One is that all teachers with emergency credentials are unqualified to teach, whereas those on full credentials are qualified. The assumption is that the latter are better, more effective teachers than the former. There is little evidence to support the assumption that credentialing alone equates with competence. Private and parochial

¹⁰These calculations are based on a composite data set created by Thomas Timar. The data set includes data from the California Department of Education's (2004) J200, J300, Academic Performance Index data files, and demographic data files.

schools do not require credentials. However, teachers in those schools are generally thought to be quite competent. If one were to take a competent, uncredentialed teacher out of, say, Jesuit High School in Sacramento, California, and place him into Sacramento High School, would that teacher suddenly become incompetent? What should we think about the competence of credentialed, experienced teachers who hate their jobs, are indifferent toward their students, and are just hanging on until they retire? What about those credentialed teachers who have long ago given up on teaching and are just there to babysit students?

The efficacy of plaintiffs' remedies is further undermined by the fact that they focus only on the symptoms of problems while they ignore their underlying causes. Teacher seniority provisions in collective bargaining contracts, for example, are one reason that low-performing schools have a larger percentage of inexperienced teachers. Schools and districts are not free to assign teachers based on instructional need, but assign based on seniority. Teachers with high seniority—the most experienced—flee to high-SES, high-performing schools. As noted earlier, the state's class-size reduction measure created a huge demand for teachers. Consequently, the best teachers went to schools that offered more attractive working conditions. In this instance, the unpredictability of the policy and political environment was responsible for flooding the state with teachers with emergency credentials. It is hard to imagine how plaintiffs' remedies would create greater predictability in the system.

Plaintiffs argue that districts with high percentages of teachers with emergency credentials should do more to attract credentialed, experienced teachers. However, it is doubtful that the teachers' union would agree to a dual salary schedule that rewarded teachers who teach in low-performing, low-SES schools.

There is little disagreement regarding the goal of having qualified, good teachers in every classroom. However, it is doubtful that plaintiffs' remedies would achieve that objective. They cite court actions in other states as examples of court-mandated reforms. However, little is known about the efficacy of those reforms. Requiring, as the court did in North Carolina, that schools be staffed by "caring" teachers and principals is one thing. Developing a legally defensible standard for caring and proposing to hold teachers and principals accountable to that standard is quite another.

Remedies Regarding Facility Standards, Compliance Monitoring, and Enforcement

It is reasonable to expect that schools should adhere to state standards for safety and cleanliness. Reasonable people would agree that schools

should be safe, clean, uncrowded, and generally well maintained. The general attainment of these standards depends on the ability of districts to build new facilities, modernize existing ones, and provide routine maintenance. As in other areas, plaintiffs are silent as to why some districts have not built new schools to alleviate overcrowding, why others have not renovated or upgraded existing facilities, and why in some districts routine facilities maintenance is allowed to lapse. Schools might not be built because districts were not able to raise local matching funds through local bond elections as long as they needed two-thirds voter approval for passage. As noted earlier, state voters have quite consistently (with one exception) approved school facilities bonds. The March 2004 bond election provided \$2.4 billion to critically overcrowded schools. How much schools spend on maintenance is determined by competition for a fixed amount of resources. As noted earlier, discretionary funds to districts are less, in constant dollars, than they were 20 years ago. Because personnel costs comprise on average just over 80% of district expenditures, there is little maneuvering room for districts. How likely would it be that teachers would agree to freeze their salaries for 5 years, for instance, so a district could undertake maintenance and renovation projects?

In this instance also, plaintiffs ignore the underlying causes for overcrowding and deterioration of facilities. As noted earlier, class-size reduction created a huge demand not only for teachers but also for classrooms. Districts needed to find classrooms for 18,000 new teachers. Although class-size reduction had an accompanying measure to fund temporary school facilities, the major problem faced by many districts was finding room to locate them. Districts like Los Angeles were faced with the choice of building over playgrounds, resorting to a year-round schedule, or busing students over long distances. Moreover, construction of new facilities is a long, complicated process that involves many steps—land acquisition (often through condemnation proceedings), permit requests, and environmental impact studies to name just a few—that can be challenged and delayed. Districts must also contend with the often-present “not in my backyard” factor. Communities may want to relieve crowding by building new schools so long as the schools are not built in their neighborhoods.

Plaintiffs’ remedies would create a new regulatory bureaucracy whose job it would be to promulgate regulations (obviously state standards will require interpretation and in cases of dispute mediation), monitor for compliance, and impose interventions. Some of the new responsibilities would be assigned to the CDE and others to county superintendents. Given that the operating budget of the CDE has been drastically reduced to the point where nearly 80% of its operating budget comes from federal sources, there is no reason to think that there is much organizational slack to take on

new monitoring responsibilities. It is also worth noting that county superintendents already are empowered by the state constitution to “superintend” the schools within their counties. That means, presumably, that superintendents or their designees could visit schools on a regular basis and write reports on conditions of schools. Those could be available to both state officials and the public. Although this would be costly, it might be less burdensome than plaintiffs’ requiring that all schools send reports to the state regarding the status of their facilities. One wonders who would read over 9,000 reports. Moreover, would such reports be required once a year? If so, might that encourage Potemkin Village behavior? Would they be required quarterly, in which case there would be over 36,000 reports to read? And what would monitors do about checking the accuracy of the school reports? Would they visit schools to see if windows and bathrooms are clean and drinking fountains are in good repair? Of course, this sort of compliance monitoring says nothing about what schools should do in cases where students vandalize bathrooms and drinking fountains, spray graffiti on walls, or break windows.

Although monitoring would be costly, interventions would be difficult, redundant, and more costly. For instance, plaintiffs would have the state establish yet another bureaucracy by having state monitors “help districts assess for eligibility for bond funding, timely file their applications, and take appropriate steps to raise local matching funds, or justify their hardship applications” (*Williams*, 2003, p. XX). This seems to ignore the fact that there are already consulting firms who work with districts in each phase of the facility’s construction or modernization process. Because they seem to be quite good at it, why not continue to rely on them? Why use limited state resources to establish a state bureaucracy when an efficient process already exists?

Finally, remedies would have an external entity to require and oversee local bond applications in the event that districts do not initiate them on their own; there is some state determination that the district should, indeed, apply for funds. Because the state, except in cases of hardship, requires a 50–50 match, one assumes that the monitoring entity will also run the local bond election campaign, presumably regardless of whether voters wanted it or not. Given the difficulty of mounting a successful bond campaign, it is unlikely that such an effort could be successful. Then, plaintiffs would have monitors remain for the duration of the facility’ project to “ensure that the capital construction projects are properly managed, work is completed according to schedule, and funds are not wasted” (*Williams*, 2003, p. XX). Would such monitors replace, supersede, or work alongside community oversight committees established by Proposition 39, the Strict Accountability in Local School Construction Bonds Act of 2000, and

Section 15264 *et seq.* of the Education Code, to oversee facility construction projects?

Plaintiffs' Remedial Model and the Problem of Entitlement

The underlying argument in the *Williams* (2000a) case is that the state is derelict in its constitutional obligation to oversee schools; responsible for ensuring that they have adequate numbers of qualified teachers; responsible for sufficient and adequate instructional materials; and responsible for clean, well-maintained, uncrowded facilities. This suggests, furthermore, that there are systematic; pervasive; and, over time, predictable barriers that deprive students of their constitutional entitlement to equal education. The suit assumes, first, that it is possible to construct legally defensible standards for schools regarding facilities, teachers, and facilities; second, that the state system of oversight it proposes will ensure that those standards are met; and, third, that implementation of those standards will guarantee all students with adequate educational resources.

Plaintiffs' efforts to extend entitlement to a set of principles and policies for state oversight of education run into the problem of how to render normative arguments based on understandings of distributive justice into claims of a constitutional nature. Although we may agree with the normative arguments, constructing legally imposed remedial interventions is an entirely different proposition. As an example of institutional reform litigation, the *Williams* (2000a) case sought to satisfy plaintiffs' aspirations to equality, opportunity, and fair treatment—the legalization agenda in education for the past 50 years. The question is whether the courts are suited to fashion the remedy to satisfy those aspirations. There is a real demarcation between problem solving generally and legal problem solving. The standard that plaintiffs sought points to issues of educational quality and excellence rather than equalization of resources. Whether those standards can be achieved through a process of adversarial legalism is questionable. The issues in the case have more to do with the quality of instruction than equalization of educational resources. Would it matter what kind of credentials teachers had if students in schools with uncredentialed teachers were scoring in the top quintile on the API? Conversely, if mostly African American students in brand new facilities stocked with ample instructional materials, taught by fully credentialed teachers in a district that spent \$10,000 more per pupil than the average district in the state, were scoring in the bottom quartile of the API, would plaintiffs be satisfied? Would the education to which those students are entitled be met? The tension between policy aspirations and constitutionally protected rights is a

core tension in the *Williams* case. Aspirations to high-quality education for all students, regardless of race, ethnicity, or wealth, are not expressed in the language of civil rights—the language of duty and obligations—but in the language of effective schools. They are framed in terms of what Fuller (1964) called the “morality of aspirations.” Aspirations go beyond regulation as “there is no way that law can compel a man to live up to the excellences of which he is capable” (XXauthor, year, p. XX). For that reason, the kinds of educational outcomes that the plaintiffs sought cannot rely on rules and mandates, as accounting procedures, reporting requirements, and compliance monitoring have little to do with attaining those ends.

Another tension inherent in the case is that of remedying violations as opposed to defining constitutional rights. If the plaintiffs’ objective was to remedy what they believed were violations of law, it would seem logical and appropriate to pursue appropriate administrative and political remedies. However, plaintiffs did not pursue administrative remedies. Instead, plaintiffs argued that the court should extend the state’s constitutional right to education to embrace some level of teacher qualifications, instructional materials, and facilities. Because the alleged violations are contextual, conditional, and temporary, and not based in legal obstacles, it is difficult to know just what those rights might be and how they could be judicially monitored and enforced. As noted earlier in the discussion, there are simply too many factors that determine the quality of education service delivery to allow the courts to fashion a single standard that could be uniformly applied.

The state requires schools and districts to report a vast amount of data. According to a study undertaken in the mid-1980s, the state required districts and schools to submit over 87 reports in a 6-month period (Bardach, 1986). The School Report Card requires a mind-numbing amount of data from schools. Most of the data, moreover, must cover a 3-year period. One wonders how districts can reasonably obtain some of the required data and what policymakers will do with it once they get it. For instance, schools must report on the availability of substitutes in the community. As plaintiffs pointed out, many of the reports submitted by schools are pro forma: all schools in a given district will submit essentially the same report. As a result, the school report cards are meaningless, providing policymakers, parents, and the community no usable information. However, this points to the chief weakness of regulatory bureaucracies of the kind proposed by the plaintiffs. They tend to lapse into formalism and legalism as attention shifts from school improvement to regulatory compliance. The penchant for formalism displacing school improvement goals is well documented (see Kirp & Jensen, 1986). A rough cost-benefit analysis suggests that the direct and indirect costs to the state, counties, and dis-

tricts of creating a new regulatory bureaucracy are high, whereas benefits are few.

The fact is that districts are responsive to deficiencies in the system. However, deficiencies may not be easily remedied in the short run. Because of voter approved state facilities bonds, the state provides funding for new construction and renovation. Teachers who now teach with emergency credentials are enrolled in teacher credentialing programs and within 1 or 2 years will have full credentials. Problems regarding teachers, instructional materials, and facilities that plaintiffs described are not static and do not exist in a static policy environment. It makes little sense then to create a massive and costly regulatory bureaucracy when many of the problems that plaintiffs pointed to may be significantly ameliorated and, in many cases, totally eliminated.

Conclusion

There are numerous tensions in a system of education governance, tensions that policymakers and social reformers must balance. What is wanted, according to one scholar, is nothing less than a decision-making mode that is

at once responsive to national concerns and local variability; attentive to professional perceptions and political preferences; sensitive to the rights of the worst-off, yet resistant to the rigidities that accompany the degeneration of legality into legalism; and able to foster both compliance to rule and organizational adaptability. (Kirp, 1988, p. 14)

Although legal strategies for institutional reform have served as a vital mechanism for raising issues of social justice that are ignored by elected branches or public officials, there is the danger that it lapses into rigidities and legalism and displaces the attainment of educational objectives with regulatory and legal compliance. In an environment where social policy aspirations are difficult to attain, it is often too easy to substitute numbers of credentialed teachers, square feet of space per student, numbers of bathrooms, and numbers of textbooks and computers for education quality.

In a recent study of law and school reform, Heubert (1999) underscored concerns regarding the capacity of legalization to improve educational quality. Heubert noted that

the growing convergence of legal standards and educational norms—which reflects a recognition that legal remedies for educational prob-

lems are likeliest to succeed if they take educational considerations properly into account—affects virtually every law-based school reform effort, and will influence the roles that lawyers, educators, researchers, parents and courts play in the reform process. (p. 32)

Such caveats are particularly applicable in the *Williams* (2000a) case as plaintiff attorneys attempted to expand educational entitlement to embrace the governance and oversight of education. There is little doubt that lawyers and courts will continue to play an important role in education policymaking. Whether law-driven reforms will improve schools is less certain if such remedies are pursued only through the courts.

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