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**School Governance in California:  
You Can't Always Get What You Want**

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Williams Watch Series: Investigating the  
Claims of *Williams v. State of California*

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## I. Introduction

In its 1999 report, *Governing America's Schools: Changing the Rules*, the National Commission for Governing America's Schools noted that "Governance arrangements establish the rules of the game. They determine through statutes, collective bargaining, legal agreements, regulations, and court rulings who is responsible and accountable for what in the system."<sup>1</sup> The report concludes by noting that "without good governance, good schools are the exception, not the rule." But what is good governance? It has meant different things at different times in the history of American education. The meaning of good governance takes on special significance in California, in the shadow of the State Supreme Court's *Butt* decision. Indeed, the Supreme Court's ruling in that case, in combination with its earlier rulings in *Serrano*, raises important questions about the state's exercise of its constitutional obligation to provide every child in the state with an adequate and equal education.

The answer to the question, "What is good governance," is all the more complicated by the fact that education governance is a vastly complex enterprise that is shaped by many forces—among them, the legislature, the Governor, the Superintendent of Public Instruction, the State Board of Education, multiple levels of bureaucracy, various levels of government, the courts, public and private interest groups, textbook publishers, test developers and testing services, foundations, think tanks, colleges and universities. With so many players exercising

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<sup>1</sup> National Commission on Governing America's Schools, *Governing America's Schools: Changing the Rules*. Denver, CO: Education Commission of the States, November 1999.

some element of control over education, it is difficult enough to imagine what a state governance “system” is let alone what a “good” system of governance might be.

Another factor complicating education governance in California is the sheer size and diversity of the state’s education system. California’s education system comprises six million students in about 8,500 schools and 1000 districts. Among students, about 25 percent are classified English Learner students<sup>2</sup> and over 47 percent qualify for free or reduced price meals. District size varies greatly: 32 percent of districts have fewer than 500 students while eight districts have more than 50,000. Among districts, 571 are elementary, 93 are high school, and 232 are unified. The state’s smallest districts have just one school, while Los Angeles has 700. In 1999-00, there were also 235 charter schools enrolling over 100,000 students. County offices of education operate 58 schools enrolling almost 66,000 students.<sup>3</sup> These numbers do not include students enrolled in Regional Occupation Programs, Adult Education classes offered by school districts and community colleges, nor the number of high school students enrolled in community college courses.

The legal structure of school governance in California developed in the early part of the last century; and while there have been constitutional and statutory modifications over the ensuing 80 years, the system’s basic features remain much the same. The educational landscape, on the other hand, has changed dramatically. In 1920, elementary enrollment was 500,644, while secondary enrollment was 162,832. In that year too, there were 12,565 elementary and 5,794 secondary school teachers.<sup>4</sup> Currently, California’s schools employ about 236,000 teachers. Not only has the size and scope of the state’s educational system changed dramatically over the past

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<sup>2</sup> Of the nation’s 3.4 million students identified as English learners, 41 percent reside in California. See S. Tafoya. “The Linguistic Landscape of California Schools,” in California Counts: Population Trends and Profiles. Vol. 3, Number 4, February 2000. Public Policy Institute of California.

<sup>3</sup> California Statewide Profile 1999-00. California Department of Education at [www.cde.gov](http://www.cde.gov)

80 years, so have public expectations of schooling. Over that past 50 years, schools were enlisted to help America's cause in the Cold War, the War on Poverty, and more recently the battle of global economic competition.

The purpose of this paper is to examine the institutional framework for educational governance. Analysis focuses on how the current system works: who is responsible for what, and how those responsibilities are carried out. While the Court has affirmed the state's *responsibility* for the quality of educational services in schools, schools are responsible for *delivery* of educational services.<sup>5</sup> Consequently, the larger question that frames this study of governance focuses on the existing institutional structure for governance and how it supports or constrains the capacity of schools to deliver high quality education services. What is the architecture that connects state responsibility and local delivery?

Questions regarding the state's oversight responsibilities for K-12 education are not simply abstract issues about governance. These questions also frame the context for *Williams v. State of California*, which alleges that the state is not exercising its constitutional responsibility for oversight of K-12 education. According to plaintiffs, conditions in schools throughout the state deprive children of equal access to education. Such conditions include unqualified teachers, lack of textbooks and instructional materials, deteriorating and unhealthful facilities, and the absence of adequate instructional programs. The UCLA School Conditions Research Project also documents these conditions and argues that they are pervasive and systemic.

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<sup>4</sup> Leighton H. Johson. *Development of the Central State Agency for Public Education in California, 1849-1949*. Albuquerque, NM: The University of New Mexico Press. 1952 p. 81

<sup>5</sup> The responsibility of schools for delivery of educational services is underscored by Public Schools Accountability Act. The accountability system measures school performance and holds schools responsible for results. The system of sanctions and incentives, furthermore, targets teachers and school site administrators.

The conditions alleged in the *Williams* case and described in the UCLA study raise questions about the capacity of California's governance structure to provide California's students with an adequate and equal education. To that end, the paper addresses the following questions:

- Who is responsible for seeing that schools have adequate resources?
- What means are available to determine if schools' curriculum, personnel, facilities, and instructional materials are inadequate?
- What means exist for determining if a school is performing satisfactorily?
- What means exist for remedying deficiencies in schools?

The overarching question is whether substandard conditions in California schools are attributable to the state's system of educational governance. The paper's major theme is that the system of governance is a major contributing factor. Since World War II, the state's role in public education has changed dramatically. Increased state activism has been responsible for shifting the locus of decision making from local school districts to the state. Over the past 40 years, a system of local control has been superseded by a system of centralized state control. Centralization itself is not the problem, however. The problem is the rationality, coherence, and efficacy of the evolved system. As the Legislative Analyst points out the change from local to central control has occurred "without any clear vision as to how the K-12 system can best foster high quality schools. As a result, the Legislature and Governor must make major decisions about the K-12 system without a long-term strategy." The LAO report goes on to cite a school district superintendent who commented that "California has an educational system with no conceptual framework."<sup>6</sup>

What is becoming increasingly clear is that, contrary to conventional policy wisdom, education governance is not an insignificant issue, something that only policy insiders care

about. How control and authority for education is organized legally, administratively, and politically makes a great deal of difference. The *Williams* case itself hinges on this issue. Judge Busch acknowledges the important relationship between governance and educational opportunity in his Order on State Demurrer, in stating that “this case will deal with the management and oversight systems the State has in place to determine if they are legally adequate and whether they are being adequately implemented.”<sup>7</sup> How governance of schools is organized and exercised has an impact on classrooms every day. Among a host of other things, it defines the kinds of educational opportunities children have; what kinds of resources are available to them; who teaches the children; what is taught in the classroom; what is tested; and what educational norms and values are transmitted to students, parents, teachers, administrators, and communities. Governance does define the “rules of the game.”

In answering questions regarding authority and oversight for education, the paper examines first, the Constitutional and legal structure of governance in the state; second, the historical context for state authority; third, the administrative structure and political context of governance; fourth, other models for governance; and fifth, a conceptual framework for a system of governance.

## II. The Legal Structure of Authority for K-12 Education in California

The allocation of state authority in California mirrors that of the federal government and other states in several important ways. Significant among them, and this is particularly true for education, is the dispersal of authority horizontally among various state agencies and vertically among levels of government. Suspicion of central government is well illustrated in the

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<sup>6</sup> Legislative Analyst’s Office. “K-12 Master Plan: Starting the Process.” p. 4.

proceedings from the Constitutional Convention of 1879, which provides the constitutional basis for education in the state and which record a deep mistrust of central government.<sup>8</sup> One of the Constitutional Convention's main objectives was to decentralize government authority by allocating responsibility among different levels of government—state, county, and city—and among various agencies. To that end, they transferred many of the tasks that had previously been the responsibility of the State Board to county superintendents or county boards of supervisors. The intent of such a scheme was to prevent the aggregation (and subsequent arrogation) of power in the hands of powerful special interests who saw in government not the pursuit of the common good, but their own private interest.

#### **A. Constitutional Provision for Public Education**

Article IX of the California Constitution establishes the legal foundation for a system of common schools. While the section on education is rather sparse, deliberately avoiding details and particulars, it provides for a state permanent fund to support schools, establishes the office of the Superintendent of Public Instruction who was to be the leader of the state schools system and eventually to head the State Department of Education.<sup>9</sup> The Constitution moreover directed the legislature to “encourage by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement”<sup>10</sup> and to “provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year”<sup>11</sup>

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<sup>7</sup> Order on State Demurrer, *Williams v. State of California*

<sup>8</sup> One member proposed that “There shall be no Legislature convened from and after the adoption of this Constitution. . . and any person who shall be guilty of suggesting that a Legislature shall be held, shall be punished as a felon without benefit of clergy.” N. Sargent “The California constitutional convention of 1978-1979.” *California Law Review*, 6. (1917) p. 12. See also H. Scheiber, “Race, Radicalism, and Reform: Historical Perspectives on the 1879 California Constitution,” in *Hastings Constitutional Law Quarterly* Vol. 17, No. 1 (1989); C. Swisher, “Motivation and Political Technique in the California Constitutional Convention 1878-79.” Pomona, CA: Claremont College. 1930

<sup>9</sup> L. Johnson op, cit. . p. 21

<sup>10</sup> CAL. CONST. Art. IX, § 1

<sup>11</sup> CAL. CONST. Art IX, § 5.

While the Constitutional Convention of 1879 modified some provisions—the election of county superintendents of education and expansion of the school year from three to six months, for instance—the basic features of the system remained much the same. In Article IX, Section 14, the Constitution invests the Legislature with broad powers to “authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in a manner which is not in conflict with the laws and purposes for which school districts are established.” Because the Constitution defines only the barest outlines of a state system of common schools, the legislature is granted broad authority to define the suitable institutional framework for the “promotion of intellectual, scientific, moral and agricultural improvement.” The system of governance that has evolved over the last 100 years is the product of tradition habituated by practice, statutory enactment, judicial interpretation, and voter initiative.

### **III. The Historical Context for State Authority over Education**

#### **A. The Consolidation of State Administrative Authority in the 20<sup>th</sup> Century**

The development and consolidation of state administrative authority over education occurred generally over the first three decades of the 20<sup>th</sup> century. Its development in California paralleled the establishment and growth of state administrative systems in other progressive states. The creation of state education departments was integral to state system building. However, the lack of an inherited administrative tradition led to a vastly complicated and diverse system of local government in which authority was dispersed among various units. Unlike European nations, which at the time were moving toward simplicity in state design, “America established one of the most complicated governments on the face of the globe.”<sup>12</sup> While Europeans developed specialized institutions within a general framework of centralized and concentrated political authority, the American experience, both at the national and state level,

belied such development. The creation of a strong, centralized state administration authority and establishment of differentiated political institutions necessitated displacing a governance structure grown out of America's unique soil. Americans were unconstrained by custom or law in creating local systems of government suitable to their preferences. As one historian points out, "The cultural, political, and economic evolution of the United States in the early national period had fostered the development of elementary schools, not as a result of state policy, but as a result of local custom."<sup>13</sup> In creating a system of public education, reformers first had to dislodge the very local customs and interests that gave rise to schools. In California, it was not until 1869, nearly 20 years after creation of the state school fund, that the state's funding system was fully implemented.

Another source of resistance to state administrative authority was a political culture of "statelessness."<sup>14</sup> What Tocqueville called the "invisible machine" characterized a politics of popular sovereignty that blurred lines of demarcation between civil society and government. Government rested largely on legal, not administrative foundations. There was no official realm of government as that which clearly distinguished the European state. Tocqueville noted a national predilection for legislation over administration, stating that the nation may be said to govern itself "so feeble and so restricted is the share left to the administrators."<sup>15</sup>

Thus, both formal structure and political culture were sources of resistance to state institution building. The combination of existing governance structures based on local interests and a uniquely American political culture that made creating centralized, politically differentiated state education systems problematic, explains the tenuous nature of state authority

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<sup>12</sup> Huntington cited in S. Skorownek, *Building a New American State*. Cambridge: Cambridge University Press. 1982. p.20

<sup>13</sup> K. Kaestle, *Pillars of the Republic: Common Schools in American Society*. New York: Hill & Wang. p. 62

<sup>14</sup> Skorownek, op. cit.

<sup>15</sup> A. de Tocqueville, *Democracy in America*, 2. vols. (New York: Vintage Books, 1945) I, pp. 72-75

that eventually emerged. These tensions are clearly manifested in the early years of development of California's school system. The tension persists today and contributes to the chasm between reformers' professed aspirations for higher levels of educational achievement and the capacity to realize them.

In spite of the tensions between localism and central administrative authority, the office of the Superintendent of Public Instruction (SPI) played a significant role in the development of education in the state. State superintendents like John Swett, Andrew Moulder, and Thomas Kirk, were indefatigable promoters of public education. They strove to legitimate publicly supported education and worked to create an institutional framework in which it could develop further. Moulder succeeded in establishing local tax rates for education. He promoted teacher institutes and the establishment of state normal schools. By the fifth year of his tenure, Swett counted among his accomplishments the "attainment of a corps of professional teachers." In Second Biennial Report he notes that "One third of the teachers in the State hold State Diplomas and certificates and one twelfth of the teachers are graduates of the California State Normal School."<sup>16</sup> He notes further that "A state Board of Education, of Examination, of Normal School Trustees; a uniform series of textbooks, a course of study, rules and regulations, an educational journal, all constitute a *system* of education, in place of the irregular and unsystematical half public and half rate bill schools five years ago."<sup>17</sup> He was also able to obtain increases in state financial support for education.

The State Education Department in its essentially contemporary form did not come into being until 1921. In that year a new Department of Education was created in Sacramento to centralize many of the state's education activities. Its principal responsibilities were for (1)

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<sup>16</sup> Second Biennial Report, 1866-67, California Superintendent of Public Instruction, p. 75

<sup>17</sup> *ibid* p. 6

developing the curriculum of both elementary and secondary schools, (2) publishing the state series of elementary school textbooks, (3) preparing an official list of approved high school textbooks, and (4) administering the state teacher colleges. Legislation in 1927 created the Curriculum Commission whose responsibility was to “outline the minimum course of study” and recommend elementary textbooks for adoption by the SBE. This committee, however, expanded its sphere of responsibility and “began to furnish leadership and direction in many aspects of the instructional program of the school system.”<sup>18</sup> Such leadership included development of *A Framework for Public Education in California* by the California Framework Committee, a subcommittee of the commission.<sup>19</sup> It represented the first known effort in California to integrate curriculum development with instructional practice.<sup>20</sup> In 1927, a Division of Teacher Training and Credentials was established in the SDE. Later, in 1947, the Credentials Office was placed under the associate superintendent and chief of the Division of State Colleges and Teacher Education. In spite of continued tension regarding authority and responsibility between the SDE and the SPI, the trajectory of administrative authority overall was toward a more integrated state system of education, a system in which oversight became increasingly consolidated.

It should be noted, of course, that state’s role for oversight, until about the mid-1960s, had a very different meaning from today’s. As others have pointed out, the consolidation of state authority aimed to professionalize education, particularly the administration of education at all levels. The trajectory of state education policy, especially between the two world wars, was to professionalize and standardize education practice. The development of teacher training in the state’s seven normal schools, teacher credentialing, and the promulgation of curriculum standardization through control over textbook selection were some of the strategies to

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<sup>18</sup> Johnson, op. cit. p. 134

<sup>19</sup> Johnson, op. cit. p.134

systematize practice. However, a strong culture of local control kept the state's role at a fairly unobtrusive level. The State Department of Education, often acting through the county offices of education, targeted its support primarily toward rural schools. Urban schools, before the Second World War, tended to be so-called "lighthouse" districts, models for best educational practices. In fact, most urban districts were better staffed than state education departments.

Another important factor shaping state oversight for education was the political culture of education generally. The "education trust" of the period comprised the leadership of the California Teachers Association (CTA), deans of the schools of education at Stanford, Berkeley, UCLA, and USC, and the SPI. CTA was a hierarchical organization with superintendents—mostly from urban districts—at the top and teachers at the bottom. Most education initiatives were the product of a small group of professional elites.<sup>21</sup> While the fault of such a system lay in its exclusivity, its virtue lay in its capacity to provide coordination to an otherwise loosely structured system of education. The University of California also played an important institutional role in oversight for educational quality. The University's commitment to geographic diversity and selectivity in admissions required the University to take an active interest in the quality of high school graduates and to assure that there would be a pool of students who were academically prepared to undertake university studies. The University had to approve each high school's courses required for University admission. The Association of High School Principals met regularly with UC admissions officers in order to align high school college preparatory courses with academic expectations.

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<sup>20</sup> Johnson, *op cit.* p. 132

<sup>21</sup> Generally, T. Timar, "The Institutional Role of State Education Departments: A Historical Perspective," *American Journal of Education*, Vol. 105, No. 3 (May 1997); T. Timar and D. Tyack, "The Invisible Hand of Ideology: Perspectives from History on School Governance," *Governing America's Schools* (Denver, CO: Education Commission of the States) 1999.

## B. Postwar School Reform Pressures and State Education Departments

While most decisions about teaching and learning had been left to education professionals, outsiders began to doubt the educational system's effectiveness. The end of the Second World War and the beginning of the cold war gave rise to a new education agenda. The agenda was rooted in the role of science in winning the war. Many believed that American superiority in science and technology had assured the United States victory in the Second World War. Radar, the bombsight, and the nuclear bomb were among the most significant scientific and technological advances of the war. Leading university scientists and foundation directors—particularly at the newly created National Science Foundation—believed that the quality of mathematics and science education in America's public schools was inadequate to meet the challenges posed by the cold war.<sup>22</sup> Some critics like MIT's Jerrold Zacharias voiced fairly polite opinions; others like Richard Hofstadter and Arthur Bestor were less kind in their condemnations of public schools for their rampant and active anti-intellectualism.<sup>23</sup> However, the real crisis in confidence over American education came in the wake of the Soviet Union's launching of Sputnik.

By the end of the 1950s, the federal government was a major force behind mathematics, science, and foreign language reform.<sup>24</sup> Its primary vehicle was the Title III of the National Defense Education Act (NDEA) which provided financial aid for strengthening instruction in mathematics science, and foreign languages. Its implementation reveals much about the role of state education departments to engender reform. States played an active role in the implementation of NDEA Title III, if for no other reason than federal funds went to state

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<sup>22</sup> S. Sufrin *Administering the National Defense Education Act*. Syracuse, N.Y.: Syracuse University Press, 1963

<sup>23</sup> R. Hostadter. *Anti-Intellectualism in American Life*. New York: Knopf, 1963; A. Bestor *Educational Wastelands: Retreat from Learning in American's Public Schools*. Urbana, IL: University of Illinois Press, 1953.

<sup>24</sup> It is important to note that NDEA reforms were aimed solely at college prep students unlike today's reforms which aim to raise the achievement level of students.

education departments. Administration of NDEA gave states two leverage points. The federal government gave states money to strengthen their own capacities for curriculum supervision and leadership and provided state departments with funds to cover the administrative costs of local implementation. The development of a new educational policy agenda did not redefine the institutional role of state education departments. Their role, as earlier, was to provide technical assistance to schools and, with respect to NDEA, act as a conduit for federal funds. Federal and matching state support through NDEA minimally increased state agency capacity to provide technical assistance. But reform efforts under NDEA did not alter institutional relationships: authority and control over curriculum remained firmly entrenched with local districts. In fact a measure of success of NDEA and other curriculum reforms was how little they interfered with local decision making.<sup>25</sup>

### C. New Configurations of Control

In spite of public criticism of the educational establishment, the pervasive ideology of expertise and its legitimization of professional control remained intact until the mid to late 1960s. A new crisis that emerged in the 1950s signaled a major shift in American political ideology and with it a new educational policy agenda. The U.S. Supreme Court's *Brown v. Board of Education* decision propelled education policy in an entirely new direction. In doing so, the decision mobilized new social movements that laid the groundwork for an educational reform agenda whose goal was massive institutional change. Newly formed interests that came to life in the social ferment of the 1960s outside of the educational establishment mobilized a new politics of education that placed new demands on the educational system. Critics of the existing system argued that existing institutional arrangements--configurations of control--were both the objects of and obstacles to change. Groups of outsiders, those who had previously been denied power,

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<sup>25</sup> Sufrin , op. cit.

sought their fair share, to gain their civil rights. Members of social movements pressed for social and civic justice. Their crusade was anchored in an ideology of individual rights and the affirmative responsibility of government to articulate and enforce those rights. Congress, federal bureaucracies, the courts, and newly formed educational interest groups were just some of the entities redefining the education policy agenda and reshaping the educational landscape.

The professional consensus that guided educational decision making for the first half of the century collapsed under the external pressures of new forces for change as well as internal pressures of professional conflict. Elite hierarchies fractured as administrators and teachers competed for control. New policy arenas were formed as state legislatures divided in support of special interests. Some members supported the interests of teachers, others the interests of administrators, yet others the interests of local trustees. The edifice of professional unity crumbled even more as groups coalesced around specific policy interests. Education for handicapped and learning disabled children, bilingual and compensatory education, the education of gifted children and a host of other interests developed their own constituencies and legislative advocates.

The new agenda was mirrored in state agencies as well, especially as their relationship to schools took a sharp turn from past practice. The consensual politics of the past 50 years was quickly replaced by a more contentious, institutionally balkanized politics. The relationships between schools and state agencies often became adversarial as state agencies became enforcers for a proliferation of educational interests. Instead of serving as an umbrella for organized interests within the state, as they had done in the past, state agencies became aligned with various policy interests: school desegregation, the education of handicapped children, compensatory education, migrant education, and a variety of new programs intended to increase educational

opportunity. New organizational structures reflected this change as state agencies turned to policy rather than subject matter or disciplinary concerns: in most state education departments, the number of special education specialists soon eclipsed the number of mathematics, science, or reading specialists. As the federal interest in education grew, so did federally funded programs and the bureaucracies to oversee them. State education departments became virtual holding companies for a collection of federal, and later, state categorically funded programs. The reshaping of state education agencies accelerated as federal subsidies to them increased and they assumed the role of federal outposts overseeing the expansion of federal policy interest in education. Administrative budgets for all state education agencies increased by 114 percent between 1965 and 1970, a jump from \$139 million to \$298 million. For the same period, total state agency staff doubled, with approximately 22,000 employees working for state departments by 1970.<sup>26</sup> Nearly 60 percent of this budget growth is attributable to federal funding.

Just as the redirection of educational policy, the redistribution of power among educational interests and the realignment of political forces changed the relationship among educational professionals, it also changed the relationship between state agencies and schools. Intergovernmental relations became increasingly adversarial as state agencies became enforcers of proliferating educational interests. The dissolution of professional consensus turned education into a highly contested territory. Parent advisory boards for categorical programs clashed with local school boards and administrators over control over those programs. District administrators in charge of bilingual education or the education of handicapped students often had stronger ties to state and federal policy makers and bureaucrats than to their local boards. Federal and state policy interests often conflicted with local policy interests. In an effort to secure compliance,

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<sup>26</sup> J. Murphy, *State Education Agencies And Discretionary Funds; Grease The Squeaky Wheel*. Lexington, Mass., Lexington Books (1974)

state and federal policy makers stretched an ever-tightening regulatory net over schools, and state education departments became the enforcers.<sup>27</sup>

With the emergence of highly differentiated policy sectors, educational governance became increasingly complex as institutional coherence gave way to programmatic fragmentation. The effects of these changes were to substantially alter the governance structure of schools. A rights-based policy agenda and the bureaucratic and legal structures that developed in its support did much to institutionalize conflict in schools. School advisory committees, an integral component of categorically funded programs, were intended specifically to undermine the authority of local boards. California's School Improvement Program, for example, was deliberately crafted as an end-run around local boards. Collective bargaining meant to redress the perceived imbalance of power between teachers and school boards.

Indeed, the professional consensus that dominated educational governance for the first half of the century was purchased at a high social price. Elite, professional control swept matters of race, ethnicity, handicapped students, teacher rights and gender under the rug for the sake of harmony. However, as an ever-growing number of social policy issues gained legitimacy and worked their way onto national political agendas, they could no longer be ignored. Equally importantly, they could not be accommodated under existing institutional arrangements. While this shift in public policy was both necessary and legitimate, it initiated major changes--often highly disruptive, as they were meant to be--in school governance.<sup>28</sup>

Strong anti-institutional sentiments and the policies they generated from the mid 1960s until the early 1980s not only balkanized educational governance but also added layers of bureaucratic control. Announcing individuals' rights is one thing, establishing an organizational framework in which they

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<sup>27</sup> See generally D. Kirp and D. Jensen (eds.) *School Days, Rule Days*. Philadelphia: Falmer Press, 1986

<sup>28</sup> G. Grant, *The World We Created at Hamilton High*, Cambridge, MA: Harvard University Press, 1988.

operate is another. Legal scholar Robert Kagan argues that the preoccupation with rights and the search for total justice has created a highly adversarial system of governance in which conflict resolution has become an expensive undertaking.<sup>29</sup> While the number of issues that are now subject to formal review has expanded inexorably, administrative authority to resolve disputes has been severely attenuated. For example, rules regarding working conditions for teachers used to be entirely within the domain of administrative prerogative. Now, they are subject to fairly rigid rules which are the product of elaborate negotiating processes. The number of teaching days, extra duty assignments, what constitutes the workday and professional development are specified to a degree that was unimaginable 40 years ago.<sup>30</sup> The effect of this has been to not only increase the transaction costs of conflict resolution, but also to make school decision making a more unpredictable process. Kagan argues that dispute resolution relies on the outcome of two-party adversarial processes, rather than administrative review processes which would allow for broader, more even-handed and consistent rule application. As a consequence, educational governance has become an unstable, unpredictable undertaking.

#### **D. The Search for A New Consensus**

The mid 1980s marked another major turning point in American educational policy. The ideology driving this shift asserted that America's educational system was undermining the nation's international competitive capacity. The new ideology's manifesto was *A Nation at Risk* in 1983, which predicted in hyperbolic terms the demise of the U.S. as an international industrial leader if it did not correct America's public education system. The urgency for massive school reform intensified with talk about the "new" global economy, the increasing economic competitiveness of Asian countries, and the emergence of a new world order based not on the "wealth of nations" but on the "work of nations."<sup>31</sup> As the visionaries of the new world order

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<sup>29</sup> R. Kagan, "Adversarial Legalism and American Government." *Journal of Policy Analysis and Management* 10, No. 3 (1990) pp. 369-406.

<sup>30</sup> See generally M. Yudoff, D. Kirp, B. Levin and R. Moran, *Education Policy and the Law, Fourth Edition*. Belmont, CA: WestGroup/Thompson Learning. Pg. 911 to 924.

<sup>31</sup> R. Reich, *The Work of Nations*. New York: Knopf. 1991

saw it, newly developing global economies would reward those countries and individuals who are highly educated and can add to the value of their nations' goods and services. Conversely, those countries with poorly educated workers would<sup>32</sup> suffer the most.

Policy makers in the United States embraced this argument wholeheartedly. In 1991, national policy makers adopted a set of national education goals, which were expanded and legislatively endorsed through Goals 2000.<sup>33</sup> The goals statements defined national standards for a wide range of academic subjects. The Clinton administration further proposed voluntary national standards in reading and mathematics. Advocates of national standards argued that students in all schools, regardless of state or region, need to acquire similar knowledge and develop similar skills. Proponents argue that there is not one math for California and another for Kentucky and a third for Michigan. Reauthorization of Title I/Chapter I during the Clinton administration required states to develop performance based standards as a condition of receiving federal funds.

While *A Nation at Risk* had an impact on California policy makers, it was bolstered by another study that showed a serious decline in the state's education system. The California Business Roundtable had become increasingly disenchanted with the quality of K-12 education in California. In response, the Business Roundtable commissioned a study of the state's school system. The study's findings affirmed the erosion of educational quality in California. The report caught the attention of newly elected governor, George Deukmejian, and members of the legislature. Moreover, Bill Honig's successful challenge to three-term incumbent Wilson Riles in the 1982 race for superintendent of public instruction made education reform a state issue.

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<sup>32</sup> See D. Ravitch, *The Troubled Crusade*. New York: Basic Books. (1983); Clinton, W. (1977) *State of the Union Message*. Retrieved from <http://www.whitehouse.gov/WH/SOU97>; K Diegmuller, (1995, April 12) Running out of steam. *Education Week*, 14, SS4-SS8

<sup>33</sup> United State Department of Education. *America 2000: An Education Strategy Sourcebook*. USDE. Washington, D.C. 2000

The legislature's response to the California Business Roundtable study was Senate Bill 813 in 1985. While the measure's critics referred to it as a "garbage can in which to toss every bright idea and private bias that non-educators had about school reform,"<sup>34</sup> its supporters saw it as a critical step toward restoring public confidence in education. One of its principle aims was to restore the number of teaching periods in high schools. Many students were graduating from high school having taken only one year of English and one year of math and the minimum requirement of four courses per year. In most high schools, students were precluded from taking more than five subjects per semester.<sup>35</sup> On another level, it signaled a new level of state activism in education. Suddenly, state policy makers in states across the nation were venturing into territory that had been the preserve of local officials. In California state activism and a shift toward policy centralization was accelerated by two other factors: *Serrano v. Priest* in 1971 and Proposition 13 in 1978. The combined effect of the two was to create a state funding system for California education. While local taxes were still a source of school funding, schools lost control over them (except in rare and somewhat limited instances).

Senate Bill 813 signaled a new direction in state activism in education. While California had traditionally been regarded as a fairly activist state, Proposition 13 propelled the state to entirely new levels of prominence. The limitations imposed on local governments by Proposition 13 and *Serrano* shifted school finance decisions to the legislature and governor. While SB 813 did not impose major constraints on local decision making, it authorized the SPI to develop a state core curriculum and restricted new funding to categorical programs, further eroding local

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<sup>34</sup> L. Cuban "School Reform by Remote Control. SB 813 in California." *Phi Delta Kappan* (November 1984) p. 213-215

<sup>35</sup> This was the result of two factors. In 1968, the legislature eliminated most state high school graduation requirements. Moreover, districts were free to decide what constituted, say, an English course. The combined effects of collective bargaining, decreasing student populations and school funding resulted in school districts trading classes for higher teacher salaries.

authority over programs and flexibility over budgets. Alignment of state tests, texts, and curriculum guides increased state influence over what was taught.<sup>36</sup>

Policies promulgated in the spirit of the new education reform agenda did nothing to diminish policies of the past generation of reforms. As in the past, the policy responses to new demands are by accretion, simply piling rules or programs on top of one another. And, indeed, this has become one of the major problems in governance in California.

#### **IV. The Structure of K-12 Governance**

##### **A. The Legal Structure of Governance**

School governance in California is a complex structure comprised of multiple agencies and levels of government. Table 1 shows the governance system's principal components.

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<sup>36</sup> M. Kirst, G. Hayward, and B. Fuller, "Chapter 5: Governance and Accountability," *Crucial Issues in California Education 2000: Are the Reform Pieces Fitting Together?* Policy Analysis for California Education. UC Berkeley-Stanford University. p.81

**Table 1. Primary Components of the State K-12 Governance System**

State	Regional/County	School District	School	Others
Governor	Regional/county Board	Local Board	Principals	Mayors
Legislature	Regional/County Superintendent	Local Superintendent	Teachers	Judges
State Board	Department Regional/County	Local Department	Parents	Unions
State Superintendent			Local School Council	Business Leaders
State Department				Community Leaders
Other state agencies and commissions				

Adapted from Policy Analysis for California Education (PACE)<sup>37</sup>

### ***1. State Education Officials***

At the state-level, governance is shared among four principal actors: the Governor, Legislature, State Board of Education, the Superintendent of Public Instruction and the State Department of Education. The State Board of Education is composed of ten members who are appointed by the Governor with State Senate Approval.<sup>38</sup> The State Board of Education is directed “to study the educational conditions and needs of the state” and to “make public plans for the improvement of the administration and efficiency of the public schools of the state.”<sup>39</sup> In designing the State Board of Education, the legislature intended to make the Board the ultimate governing and policy making body for the Department of Education, its officers and employees.<sup>40</sup> According to the Board’s own mission statement, it is to “create strong, effective schools that provide a wholesome learning environment through incentives that cause a high

<sup>37</sup> *ibid* p.80

<sup>38</sup> CAL. EDUC. CODE § 33000

<sup>39</sup> CAL. EDUC. CODE § 33032

<sup>40</sup> 41 Op. Atty. Gen. 105 (1963) cited in UCLA School Conditions Research Project, UCLA School of Law.

standard of student accomplishment as measured by valid, reliable accountability system.<sup>41</sup> The Superintendent of Public Instruction is an elected constitutional officer whose responsibility is to “superintend the schools of the state.”<sup>42</sup> The Superintendent is also responsible for implementing Board policies. The State Department of Education is responsible for administering and enforcing the laws pertaining to education in the state. Moreover, the department is responsible for the annual identification of the “critical needs for which effective programs and practices are to be disseminated to schools.”<sup>43</sup>

Although the California Department of Education (CDE) is the administrative agency responsible for school oversight, its capacity to oversee has seriously eroded over the past 15 years. The department’s budget for 2001-02 is roughly \$ 61.6 million in state general fund support and \$ 114.4 million in federal support, and \$26.8 million in other funds. The total, \$202.7 million is about one-half of one percent of total expenditures for K-12 education.<sup>44</sup> If federal support did not comprise over half of state education department funding, state support for administration and oversight would be almost negligible. Figure 1 shows funding for state operations for the CDE between 1990-91 and 2001-02. In constant dollars, funding for CDE operations declined by 34 percent between 1990-91 and 1995-96. Between 1990-91 and 2001-02, state general fund support increased by 18 percent. Like other state agencies, the CDE is dependent upon the legislature and the governor for its budget. What is most striking is the increase in federal funding—from just under \$49 million in 1990-91 to just under \$86 million, a 76 percent increase in constant dollars.

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<sup>41</sup> State Board of Education 1998

<sup>42</sup> C AL. EDUC.CODE § 33112

<sup>43</sup> CAL. EDUC. CODE § 33321

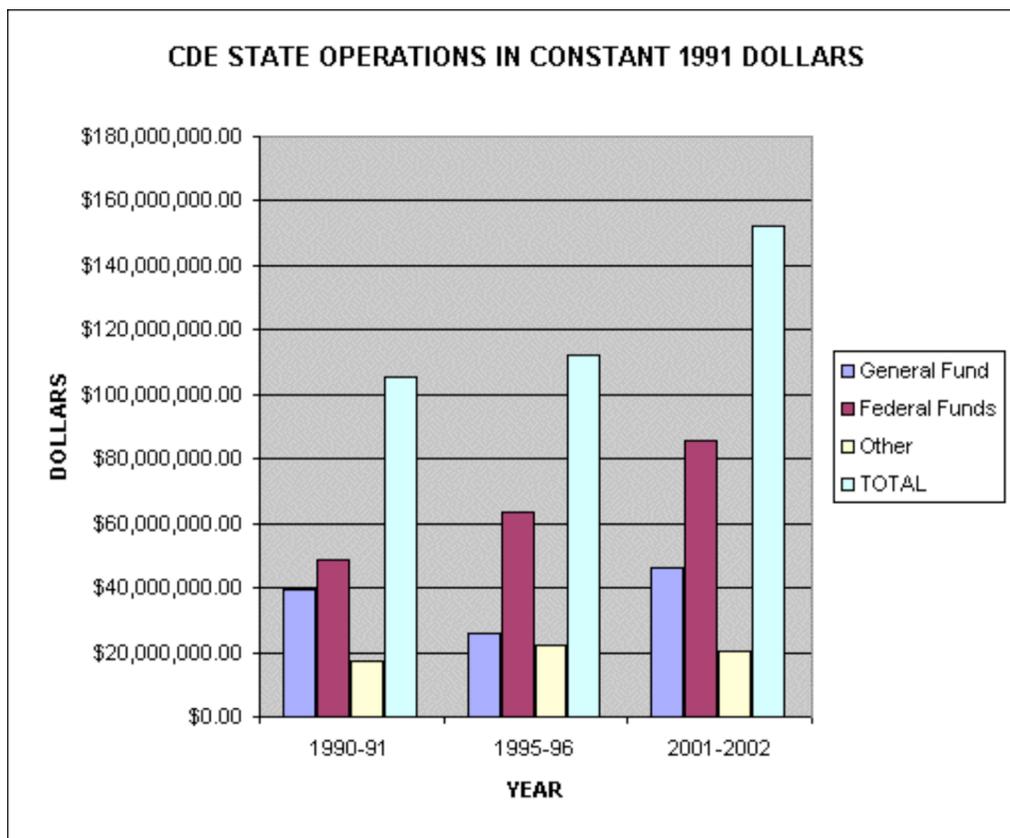
<sup>44</sup> Data obtained from the CDE Budget Office. According to the Legislative Analyst’s Office (personal communication), the 2001-02 budget figures for the CDE are roughly \$120 in general fund support and \$97 million in federal support.

As with schools, the legislature has shown a tendency to micro-manage the department also. Rather than allocating general purpose funds to the department, the legislature is attaching funding to specific responsibilities. For instance SB 961 (Chapter 749, *Statutes of 2001*) allocated \$3 million to the department of education to develop multiple indicators for the API. The governor decreased this amount by \$2,142,000 “absent a detailed expenditure plan by the Department of Education justifying this need.” Similarly, SB 1632 (Chapter 996, *Statutes of 2000*) allocated funding to the Department of Education to develop a school report card.

**FIGURE 1**

**CALIFORNIA DEPARTMENT OF EDUCATION STATE OPERATIONS IN 1991 DOLLARS**

<b>Fiscal Year</b>	<b>1990-91</b>	<b>1995-96</b>	<b>2001-2002</b>
<b>General Fund</b>	\$39,330,000.00	\$26,051,685.00	\$46,379,085.00
<b>Federal Funds</b>	\$48,744,000.00	\$63,482,756.00	\$85,980,901.00
<b>Other</b>	\$17,282,000.00	\$22,490,101.00	\$20,128,084.00
<b>TOTAL</b>	\$105,356,000.00	\$112,024,542.00	\$152,488,069.00



One of the defining political features of the education excellence movement of the mid 1980s was the active engagement of governors in public education. Bill Clinton and Richard

Riley were among the most prominent among governors who spearheaded education reform in their states. No less in California, the last three governors, Deukmejian, Wilson, and Davis, have all claimed the title “education governor.” One consequence of heightened gubernatorial interest has been establishment of the office of Secretary of Education by Governor Wilson in 1991. Prior governors had education advisors, but the creation of a cabinet level position indicated a new, more visible and central role for the governor in education. The office was created to provide policy support and development to the governor. However, the duties of the office have expanded. Senate Bill 1667 (Chapter 71, *Statutes of 2000*) funds technology grants for high schools and assigns oversight and administrative responsibility for the program to the Secretary of Education in spite of the fact that there is a unit within the CDE explicitly for that purpose.

Other state agencies also exercise some form of oversight responsibility. They include the State Allocation Board, which is responsible for facilities financing; the Commission on Teacher Credentialing, which controls teacher and administrator certification standards and has much to say also about teacher professional development; the State Architect, the Department of Finance, the Public Employees Relations Board, the State Controller’s Office, the State Auditor General, and the Little Hoover Commission. Clearly, there is considerable difference in the kind of oversight exercised by the California Teachers Credentialing Commission through its authority over the teaching profession and the Auditor General, whose responsibility for education oversight is ad hoc and occasional.

As noted earlier, the Constitution assigns broad authority for K-12 education to the legislature. Since the mid-1980s as school funding shifted to the state, and as education reform efforts have intensified, the legislature has come to be a key player in education decision making. Not only does the legislature enact literally hundreds of measures affecting education each year,

but legislative intrusion into what had previously been regarded the territory of experts or local officials has become routine. Legislation over the past five or six years has become increasingly prescriptive, specifying, for example, how reading must be taught, or specifying in great detail “rights of parents” to “participate in the education of their children.”<sup>45</sup>

The aggregate effect is that there is a “lack of coordination and accountability in the education system because there are so many agencies involved with little effective linkage among them.”<sup>46</sup>

## ***2. Regional and County Officials***

Each county board of education consists of five to seven elected members. County boards of education do not have direct jurisdiction or control over the conduct of operations within school districts. The county superintendent, who may be either elected or board-appointed, is responsible to “superintend the schools in his or her county” and to “visit and examine each school in his or her county at reasonable intervals to oversee its operation and learn of its problems.”<sup>47</sup> In addition to the constitutionally defined responsibilities of the county board and superintendent, the legislature has assigned them additional responsibilities. They include responsibility for child welfare and attendance supervision; responsibility for health and physical education; responsibility for research, guidance, and programs for physically handicapped minors; a statutory mandate to serve small school districts, and oversight for school district fiscal accountability through the Financial Crisis Management and Assistance Team (FCMAT). Assembly Bill 139 enacted in 2001,<sup>48</sup> extends the authority of county superintendents to review district expenditures and fiscal controls when they have reason to believe that fraud or

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<sup>45</sup> Chapter 741, *Statutes of 2001*. (Assembly Bill 961, Low-performing schools)

<sup>46</sup> Joint Committee to Develop A Master Plan for Education—Kindergarten through University, Governance Working Group, Final Report, December 2001.

<sup>47</sup> CAL. EDUC. CODE CAL. § 1240

misappropriation of funds has occurred in the district. Historically, county offices of education were meant to provide technical assistance, curriculum support, and fiscal oversight to rural school districts that lacked the necessary resources to adequately undertake such activities on their own behalf.

While county superintendents and boards of education have some oversight responsibility regarding K-12 education in their respective counties, they generally operate within their limited bureaucratic spheres. Over time, these have become fairly limited. While county superintendents are responsible for “superintending” the schools within their counties, few would be free to exercise that responsibility. The separation of county and district responsibility is aptly illustrated by the fact that there appears to be no record of county and local boards holding joint meetings. As other education entities in the state, county offices operate within their own institutional boundaries. Anecdotal evidence points to competition and hostility between county offices and local districts. In one district, principals would not permit teachers to participate in county sponsored professional development programs for implementing state standards. Whether this is an isolated incident or common practice is not known given the absence of systematic study.

The only known study of county superintendents in recent memory is a study conducted by the Legislative Analyst in 1971. It identified a number of issues related to the role of county offices of education for oversight and support.<sup>49</sup> The study found little evidence to justify the existence of county offices of education and recommended their abolition in favor of regional education districts.

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<sup>48</sup> FCMAT was created by AB 1200 in 1991 in response to the financial debacle created by the Richmond Unified School District which was the subject of the *Butt* decision.

<sup>49</sup> Legislative Analyst, “The Intermediate Unit in California’s Education Structure, A Study of the County Superintendent of Schools. January 25, 1971.

### ***3. School Districts***

School districts are the state's chosen means for operation of its common school system. The local board of education is the governing body of the school district, and is responsible for maintaining schools within the school district. The local board of education is also responsible for enforcing the rules of the State Board of Education. The local superintendent of schools administers the schools in the district and provides for the maintenance and repair of school district property. The superintendent is also chief executive officer of the board of education.<sup>50</sup>

#### **B. The Administrative Structure of Governance**

While state-level governance has become scattered among various decision making bodies, there are several structural mechanisms in place for oversight of schools. These include explicit regulatory mechanisms like the Coordinated Categorical Review, the recently-defunct Program Quality Review, the Financial Crisis and Management Team, and the Public School Accountability Act. School accreditation under the Western Association of Schools and Colleges (WASC) is a non-governmental means of peer evaluation of educational institutions and programs. In 1997, the State Department of Education signed a Memorandum of Understanding with WASC to develop a joint process for conduction PQRs and WASC accreditations.<sup>51</sup> Finally, there are quasi-market oversight mechanisms such as charter schools.

##### ***1. Coordinated Compliance Review (CCR)***

In 1983, in response to Assembly Bill 777 (1982), a California Department of Education task force was directed to develop a coordinated compliance review (CCR) process. Its purpose was to simplify and coordinate the legally required compliance monitoring of specially funded

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<sup>50</sup> Education Code provisions for school districts are contained in § 35000

<sup>51</sup> Department of Education , Memorandum of Understanding: California Department of Education and Western Association of Schools and Colleges, Accrediting Commission for Schools. October 23, 1997

programs and “simultaneously maintain a commitment to students with special needs.”<sup>52</sup> Schools receiving categorical funds are reviewed on a four-year cycle. According to the CDE’s Training Guide, the compliance review process has our main goals.

- *Decrease* multiple compliance monitoring visits by CDE.
- *Increase* local responsibility for ensuring compliance by encouraging participating LEAs and schools to perform a self-review for compliance.
- *Ensure* that categorically funded students are provided with the school district’s core curriculum and that the instructional delivery system, as well as support from supplemental funds, is utilized to help these students learn the district’s core curriculum.
- *Provide* technical and management assistance to LEAs to prevent and resolve noncompliance problems.

Beginning in 1996-97 school year, LEAs were asked to conduct self-reviews of their schools.

Schools are given one year in which to conduct the review and, in the majority, of cases the school’s self-review is considered the official report of findings, and no on-site validation occurs. An other criterion determining whether a school receives an on-site review is the extent to which students at a school are meeting district-adopted standards. The general review process comprises CDE selection of LEAs to be reviewed. LEAs attend CDE sponsored training institutes to assist them in their self-reviews and prepare them for validation reviews. LEAs are then required to conduct district and school-level self-reviews during the preparation year. By the beginning of July of the self-evaluation year, LEAs submit evaluations to the CDE. Finally, some districts are selected for “validation,” site visits by review teams.

The department’s training manual states that these reviews are meant to assure all students receive a common, basic education. However, the reviews reveal a number of shortcomings. Some of them appear also in testimony of Dr. Clark-Thomas, Compliance

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<sup>52</sup> California Department of Education, “Coordinated Compliance Review Training Guide 2000-2001. p. 1

Manager in the CDE. Among the chief shortcomings of compliance reviews is their narrow focus on state and federal program regulations. Such rules often focus on minutiae and miss larger issues. For instance, a school in ABC Unified School District was cited for non-compliance (in this instance with Title IX regulations) because the student council was comprised of too many girls, the school did not provide sufficient staff training regarding Title IX compliance, or because the name and phone number of the Title IX coordinator was not on the sexual harassment policy, though the policy itself was prominently displayed. Some of these issues which trigger non-compliance complaints seem far from the classroom and seem, moreover, to have little to do with instructional quality.

In other instances, CCRs did point to potentially serious issues such as Oakland Unified School District's excessive use of substitutes, weaknesses in curriculum and instruction, and lack of district standards. However, there was no coordinated and consistent follow up to correct the problems. In general, the review is meant to engage districts in a thorough and comprehensive analysis of programs serving students eligible for compensatory funding. However, the very fact that the review is driven by categorical program regulations limits its breadth and scope by narrowing its focus principally on certain programs. And while it is conceivably possible to address broader issues of general program quality through the Integrated Program Item in the CCR, it seems to be rarely used. As noted earlier, the CCR is mostly concerned with regulatory compliance and for that reason, easily slips into the routine and pro forma. While training manuals emphasize overall program quality, there is little evidence from the reviews that they look much beyond the required program mandates. One gets the sense that a school could get a good review, be in compliance with all the state and federal regulations, yet have chronically poor student performance. CCR, for example, oversees district and school compliance with Title

I regulations. In this instance, too, many schools are in compliance with Title I regulations, but the regulations have little to do with program quality. Traditionally, it has focused on schools showing a paper trail for fund expenditures and student eligibility.

A serious weakness of the CCR process is that it, like most oversight activities, is a fragmented process. Within the CDE there are several units with responsibility for various aspects of the CCR process. Similarly, local responsibility for conducting reviews is shared between schools and district offices. When there are matters of non-compliance, districts are notified and given 45 days to correct the problem. If there is no action, the period for correction is extended to an entire academic year. However, there are instances in which schools have been found to be noncompliant for as many as ten years without sanctions or corrective actions imposed on them. Moreover, schools may be found non-compliant and get a new principal who may never be informed by the district of unresolved compliance issues. While districts are ultimately responsible for responding to the state, communications between district offices and schools often leaves much to be desired. The overall impression, one that is supported by testimony by Clark-Thomas, is that the quality of oversight is inconsistent and unpredictable. It seems to depend largely on school variables—how seriously teachers and administrators regard the review and how concerned they are about program quality.

The weakness of CCRs as oversight mechanisms may be due also in the fact that the CDE has few weapons in its arsenal of sanctions, which consist principally of warning letters and, ultimately, threats of withholding program funding. While the latter may be threatened, it is rarely if ever used, as withholding funds is generally thought to punish students, not school officials responsible for program administration.

WASC reviews suffer from similar shortcomings. Since WASC is a voluntary peer

review, it lacks any real enforcement mechanisms. Moreover, it appears that schools routinely receive positive reviews in spite of the fact that students in those schools predictably score near the bottom of any state-wide assessment. In those instances where WASC combines with CCRs, its usefulness as an oversight tools is limited by much the same deficiencies as CCR. The potentially transformative power of WASC is also situational—dependent upon specific school conditions. A conscientious review team might point to significant problems in a school district, but might be loath to use even the limited sanctions within their authority. Schools may be granted limited accreditation or, in the worst case, lose their accreditation. Again, the common perception is that such actions may potentially cause harm to students and, therefore, are rarely invoked.

## ***2. Fiscal Crisis and Management Assistance Team (FCMAT)***

Assembly Bill 1200 in 1991 created FCMAT, principally in response to the fiscal debacle in Richmond Unified School District (which gave rise to the *Butt* case). FCMAT is established and organized to provide fiscal management assistance at the request of a school districts or county office of education. It is also intended to provide and facilitate training in fiscal management to school districts and county offices of education, their executives, board members, and financial officers. County Offices of Education can request FCMAT to conduct an audit of a district it believes may be headed toward deficit spending. The legislature may also direct FCMAT to review districts that are in serious financial trouble.

True to its name, FCMAT intervenes to avert fiscal crises in districts. FCMAT reviews are not limited to just district balance sheets. They also evaluate the adequacy of facilities, school maintenance and safety. While the reviews tend to be very thorough, they are somewhat limited,

by law, in their scope. While they can and do address issues<sup>53</sup> related to teaching and learning, they most often focus on issues of management. FCMAT seems to share the limitations of other oversight mechanisms, notably CCR. There is no consistent follow up to its recommendations. Matters related to the fiscal health of the district generally do get attention. However, a wide range of other issues do not. The Oakland Unified School District Site Review results gave all but one Oakland's high school a grade of "F" (one gets a "D"). Yet, there is not indication that the state or any one else, including the district, has taken action on the various items noted by the site visit. It should be noted parenthetically also that the same high schools that were given grades of "F" were given a clean bill of health by WASC in their accreditation.

While FCMAT is very thorough in carrying out its responsibilities, its span of authority is narrow. It was created by the legislature for a very specific purpose and has no authority to exceed its charge. While a district audit may reveal serious educational problems in a district, there is no mechanism to elevate such concerns to trigger broader investigation or action.

It is indicative of the general system of state oversight that FCMAT had to develop its own standards for evaluating district performance. There was no state prototype to draw upon.

### ***3. The Public Schools Accountability Act (PSAA)***

In 1997, a committee established by the legislature issued recommendations for a standards-based accountability system. The report, entitled "Steering by Results," proposed a system based on multiple measures of school performance to create a single-number index of school quality. Such an indicator would act, much as economic indicators, as a measure of the educational health of individual schools and, in the aggregate, the system as a whole. Such an indicator would also be the basis for rewarding schools that do well and invoking sanctions

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<sup>53</sup> See, for instance, FCMAT's review of Oakland Unified School District.

against schools that do poorly. The measure was successful in the legislature, but vetoed by Governor Wilson in 1998.<sup>54</sup>

Immediately after his election as Governor, Gray Davis adopted the recommendations from “Steering by Results” for a special legislative session in January of 1999, called expressly for the purpose of enacting a state accountability system.. An entirely new, comprehensive, high stakes accountability system was adopted in a matter of weeks and implemented by the following September. The Public Schools Accountability Act (PSAA) enacted by SB1x (Chapter 3, *Statutes of 1999*) contained three major components.<sup>55</sup>

- The Academic Performance Index (API) would provide each school with a single number score, based on multiple measures of school performance, including at least 60 percent test scores and the remainder comprised of other measures, and with an annual growth rate for improvement.
- The High Performing/Improving Schools Program would award monetary bonuses to schools and staff for meeting or exceeding API growth targets.
- The Immediate Intervention/Underperforming Schools Program (II/USP) would establish an intervention program for schools that do not meet growth targets and are considered underperforming. II/USP schools receive money for planning and implementing initiative to help students achieve at higher levels and are subject to interventions, including the possibility of state takeover if they fail to improve.
- While not part of PSAA, the special session also added the mandatory high school exit examination, which all students must pass in order to receive a diploma.

While in principle these reform measures may be a significant step toward creating uniform curriculum standards and expectations for students, there are serious limitations regarding their efficacy for state oversight of K-12 education. Some of the limitations related to problems of implementation, others inhere to the design itself. The larger question that emerges

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<sup>54</sup> EdSource, “Current Policy Readings: K-12 School Reform in California.” Palo Alto, CA. p. 5

<sup>55</sup>See EdSource, op. cit. p. 7; PACE op. cit.;

from the PSAA is whether a system of “accountability” as envisioned in legislation can serve as an effective monitoring mechanism for educational quality.

*Academic Performance Index (API).* The legally required components of API were meant to be multiple indicators (as noted above, 60 percent of the index was to be based on assessment and 40 percent on other factors). However, since other measures were not available, the API was based solely on the Stanford Achievement Test Series, Ninth Edition, or SAT 9. SAT 9 scores are converted into API scores, which can range from 200 to 1000.

The state set an initial statewide score of 800 on the API for all schools. For schools scoring below the 800 target, they are expected to increase their API score by 5 percent of the difference between its API score and the statewide target. The average scores of numerically different subgroups—comprising 15 percent or more of the student population—are expected to increase by 80 percent of the target for the school. Schools that meet and exceed targets are eligible for monetary rewards to both individual employees and to schools. Schools below the 50<sup>th</sup> percentile and that do not meet growth targets may apply for assistance under the II/USP. Schools participating in II/USP are required to contract with an outside evaluator to assist the school and the district is required to devise an action plan to correct deficiencies. The state provides money for external evaluators and also gives schools \$200 per pupil to implement the action plan.

According to critics of the state’s accountability strategy, there are serious flaws with the API. Chief among them is the reliance on a single measure of change from year to year as a measure of accountability, and presumably educational quality. As noted above, the index relies on a single measure, the SAT 9 which is nationally normed and measures general skills. In this regard, its most serious flaw is that the test, and therefore the score, is not related to the state’s

own curriculum standards and frameworks. As a consequence, what is tested is not what the state requires schools to teach. There is also some doubt as to what increases in scores actually mean. In the second year of the test, average scores increased statewide. However such increases can be caused by a number of factors. Among them are teachers teaching to the test (and it is worth noting again that it is a test that is not aligned with state content standards) and as students become more familiar with the test, their performance would naturally increase. There is also some evidence that schools are spending resources on teaching children how to bubble in test answers. There are school districts that have invested in programs such as “PIRATES” which focuses on getting students to fill in all the bubbles on the test sheet. Schools have found that such training pays off. Test scores increase. There is also evidence that schools have adopted a *triage* strategy of focusing resources on those students who are most likely to produce the greatest gains. The fact that many of the low performing schools have very high student mobility rates casts some doubt on the index’s validity as an accurate measure of a school’s instructional effectiveness.

The discontinuity between state curriculum content standards and the SAT 9 is slowly being addressed by inclusion of the “augmented” portion of SAT9, which is based on the states content standards. However, the implementation of API before a test aligned with state standards and an index that met the legislative requirement of multiple measures could be developed might lead one to conclude that political considerations superseded policy considerations. Such premature implementation also has significant consequences. It is wasteful, and confusing; destroys policy continuity and integration and the confidence of students, teachers and the public when one area of state policy allocates hundreds of millions of dollars to the development of aligned content standards, teacher professional development, teacher pre-service training, and

textbook and instructional materials, while another area of state policy allocates hundreds of millions of dollars to test students and reward schools and teachers for results that bear little relationship to the first.

Finally, another serious weakness in API as a state school oversight mechanism is that it tells both state and local decision makers very little about the problems in schools. Like its predecessor, the California Assessment Program (CAP), it delivers news. And like the CAP, there is a disheartening predictability regarding test results. One can pretty much predict schools' scores just from knowing previous years' scores and the school's socio-economic and demographic indicators. But, the API has no diagnostic ability. It cannot tell schools how to improve teaching and learning and where weaknesses in its program exist. There is no way of giving feedback to teachers and administrators or policy makers in Sacramento why schools are failing. What the API tells policy makers is how many schools are failing. But the meaning of failure and, presumably of success, is very limited. It may be more meaningful once SAT 9 measures the intended curriculum. However, there are certainly other important indicators that could be taken into consideration. How many of a school's children are in the pipeline of courses that qualify them for college admission? How many high schools offer UC's "A—G" courses, and how many of those courses are certified by UC? Does the school offer advanced placement classes? Does the school offer extended day and enrichment programs for children? The list could go on, but the important point is that the quality of a school and its instructional program encompasses far more than simply test results. This is not to say that test results are unimportant. They are, but, they only provide information about one variable related to schooling. If a school with an API score of, say, 450 increases its score by 20 points the next year (and all the various subgroups do their part by increasing also), what does that really mean?

What can policy makers conclude from that other than the mere fact that the school's score went up by 20 points.

If policy makers in California had familiarized themselves with research on the effects of high-stakes testing, they might have measured their enthusiasm for its assumed capacity to improve educational achievement. An edition of *Issues in Education: Contributions from Educational Psychology* is devoted entirely to research on the effects of high stakes testing.<sup>56</sup> Among other findings, researchers concluded that tests such as California (and other states) has created to reward schools “on the surface looks like a reasonable idea, but closer analysis reveals many problems.”<sup>57</sup> Among them that

“paying teachers and students for ...scores sends a clear message that the test is a valid indicator of skill and the major measurement of academic accomplishment. A high-quality education becomes equated with high scores.....”<sup>58</sup>

Researchers further point out that tests such as California's SAT 9 are basically unfair to parents, teachers, and students because they equate real academic accomplishment with test scores which may have little bearing on either what is taught or real academic achievement. Such tests are intrinsically unfair, researchers argue, because of what they do and do not measure.

..standardized achievement tests measure characteristics of student mostly their factual knowledge about academic subjects, and the same test measures NOTHING about the quality of teachers or schools EXCEPT the distribution of smart students in the schools. It is the distribution of high-scoring students that is correlated with SES and parental education that is reflected in ...scores and they are confounded with any effects due to teacher effectiveness. *Allowing high- stakes test scores to be used as measures of teacher or school effectiveness may be unethical practice that should be challenged by researchers, educators, parents and testing experts.*<sup>59</sup>

<sup>56</sup> See generally *Issues in Education: Contributions from Educational Psychology*, Vol. 6, No. 1/2, 2000.

<sup>57</sup> *ibid* p. 84

<sup>58</sup> *ibid* p. 85

<sup>59</sup> *ibid* p. 85. Upper case in the original, italics added.

Researchers note that “many people will disagree with our position (regarding high-stakes testing) or argue that the negative side effects are acceptable risks for other benefits of testing.”<sup>60</sup> However, they also point out that they are not advocating abolition of all achievement testing and that they do support holding students and teachers accountable to high standards. They argue for a form of accountability that is more attuned to real teaching and learning and holds teachers and students accountable for real accomplishment rather than the superficial accomplishment measured by most achievement tests.

*Immediate Intervention/Underperforming Schools Program.* Schools considered underperforming may receive money and assistance to develop and implement improvement strategies. In 1999-00, funding was provided for 430 schools. However, 1,419 eligible schools applied for the programs. In 2000-01, funding was again limited to 430 schools even though 532 eligible schools applied.<sup>61</sup> Assembly Bill 961 (Chapter 749, *Statutes of 2001*) modified original provisions by expanding the duties of the external evaluator, specifies parent rights with regard to access to schools and information, but its most important provision is to add \$200 million to support schools as the lowest performing based on their API.

However, whether II/USP can serve as an effective mechanism for school oversight and improvement remains to be seen. Preliminary evaluation of the quality of the required school action plans, developed with the assistance of external evaluators, which II/USP schools are required to submit to the CDE are not encouraging. According to the evaluation, plans tended to focus on changing teaching practices and increasing APIs with “little or no attention on the more general goal of improving actual student learning.”<sup>62</sup> More importantly, plans “uniformly lacked

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<sup>60</sup> *ibid.* p. 105

<sup>61</sup> Legislative Analyst’s Office, *2001-02 Analysis* (February 2001) pp. E-100 to E-101. See also California Budget Project, “Budget Brief” March 2001.

<sup>62</sup> Katherine McKnight and Lee Sechrest, “Evaluation of the Quality Action Plans.” Evaluation Group for the Analysis of Data. University of Arizona. March, 2001

an explicit strategic model for school reform and for evaluation of the school reform plan. The majority of plans seem to be a *patchwork of disconnected strategies lacking a cohesive framework*. Plans also lacked specific analyses showing that the work could be completed in the proposed time frame and that the goals could actually be achieved.”<sup>63</sup> The study found that school evaluators tended to rely on prepackaged programs or “off-the-shelf” programs for school action plans. However, “the greatest concern was that plans did not provide a rationale why a packaged program was selected or how the selected program would meet the specific needs of the students. Program selection often appeared to reflect mostly convenience or familiarity.”<sup>64</sup>

Other findings are equally discouraging.

- While plans tended to rely on changing teacher practices, professional development was not addressed at all or addressed only superficially.
- Plans generally addressed content standards only marginally.
- Plans showed little evidence of needs assessments to justify the action plan that was recommended. In other words, the action plan was not based upon an understanding or real needs. Plans generally were missing important information regarding conclusions, again reflecting inadequate needs assessment.<sup>65</sup>

Given such conclusions regarding II/USP, the prospects for improvement are not encouraging. Indeed, little is known about the qualifications of evaluators.<sup>66</sup> Almost 90 percent of the plans were judged to provide insufficient information regarding the evaluators’ qualifications for the task. Plans reflected the assumption that the state-approved list was sufficient evidence of the evaluator’s competence and expertise. Once list was created, CDE would not consider modification of that list for at least four years, regardless of how the

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<sup>63</sup> *ibid*, Emphasis added.

<sup>64</sup> *ibid*

<sup>65</sup> *ibid*

<sup>66</sup> The selection process suffers from some ambiguity. The CDE approved a list of evaluators whom schools may select. This list may be in effect for three years and excludes anyone who did not apply in the initial selection.

performance of the initial group of evaluators. It is especially discouraging news given the fact that II/USP is a cornerstone of the low-performing schools improvement strategy and that state appropriations for this activity were \$72 million in 2000-01 and \$161 million in 2002-02.

Assembly Bill 961 (Chapter 749, *Statutes of 2001*) adds another \$300 million for low performing schools.

The CDE is also conducting its evaluation of II/USP. Based on preliminary findings, it concludes that “In general, the external evaluators received *high marks for the assistance provided and the contributions* made to their schools.”<sup>67</sup> The department’s evaluation is based on a survey of site administrators and site visits. According to the principals’ survey 91 percent of principals stated that evaluators were “*highly responsive to Action Plan input from parent and community members;*” 90 percent reported that evaluators “*collaborated closely with schools;*” 87 percent stated that they “*fulfilled the terms of their contracts.*”<sup>68</sup> On the other hand, when one looks at principals’ responses to what they believed was the “most helpful assistance from evaluators,” 21 percent reported “acting as facilitator for the Action Plan process; 18 percent reported “providing guidance and structure for the action plan;” 15 percent reported “expert knowledge and experience;” 9 percent reported “analyzing data;” eight percent reported “providing leadership/acting as a catalyst for the planning process;” and eight percent reported “writing, or assisting with writing, the Action Plan.” One may well wonder how the two sets of conclusions could come from the same findings. One may also wonder what external evaluators provided for their substantial fees.

It is important to note that II/USP is a voluntary program. Not all low-performing schools participate, and, in fact, cannot participate due to limited state funding. Therefore, its capacity to

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<sup>67</sup> California Department of Education, Division of Policy and Evaluation. “Research Summary: Implementation Findings about State-Funded II/USP Schools. May 2001. Emphasis in the original.

uncover major problems such as those alleged in the *Williams* case is rather limited. Moreover, external evaluators have no real authority over issues such as facilities or even the quality or availability of classroom space or textbooks. Their charge is to help schools increase their API scores. As such, there is no indication that they look at the broader schooling environment to suggest that perhaps API scores are low because the school and district is operating under sub-standard conditions. External evaluators cannot address the larger issues such as the quality of the buildings, the quality of leadership, of district support, or of the quality of textbooks and instructional materials. As the evaluation of external evaluations found, external evaluators focused primarily on changing teacher behavior, generally more professional development. Furthermore, if evaluators were to turn the spotlight on the kinds of conditions alleged in the *Williams* case and corroborated in some of the FCMAT reviews, there is no means of feeding that information back into the policy system for remediation.

There is something rather perverse about the accountability system embodied in PSAA. It provides bonuses to \$25,000 per teacher in schools that show improvement on their test scores and provides sanctions against those who do not. The underlying theory of the bonus is that significant gains in student achievement are possible even in the short term. One just has to pay teachers enough in bonuses. But that raises the troubling question of why some teachers did not achieve the results that would have qualified them for bonuses. In the face of high potential pay off on the one hand and potential job loss on the other, why were all schools not able to show high levels of improvement? If incentives work, why wouldn't they work across the board? Does anyone within the educational policy community know what schools in which teachers received maximum bonuses did to improve test scores? And similarly, does anyone know what schools that failed to improve did not do?

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<sup>68</sup> Ibid. Emphasis in the original.

#### ***4. High School Exit Examination (HSEE)***

Beginning with the class of 2004 all students must pass an English language and mathematics arts section of the newly created HSEE in order to receive a high school diploma. The purpose of the HSEE is to “ensure that students who graduate from high school can demonstrate grade-level competency in the state content standards for reading, writing, and mathematics. Since January 2000, the CDE has worked with a development contractor, the American Institute for Research (AIR) to develop and try out test questions for use in the HSEE. Ninth graders were tested on a voluntary basis in the spring of 2001. Students who passed the exam will not have to take it again. Students who do not pass the HSEE exam have eight more opportunities to take the exam beginning in the spring of the 10<sup>th</sup> grade.

Legislation specifying requirements for the test also called for an independent evaluation of HSEE. The subsequent evaluation, conducted by Human Resources Research Organization (HumROO), was issued in June, 2000. The evaluation had several significant conclusions. In general, evaluators found substantial progress toward development of test items. However, the report also cautioned policy makers not to implement the test prematurely. One of the major difficulties in the test was the low alignment between test items and the current curriculum. The principals’ survey found that most principals believed that if the test were implemented according to schedule, there would be a high failure rate because students did not have time to prepare for the test.<sup>69</sup>

Those and other concerns related to implementation of HSEE are stressed in a letter from State Superintendent of Instruction, Delaine Eastin, to Governor Gray Davis.<sup>70</sup> She notes that the Governor’s signing of SB 1353 (Ch. ) mandates all high school students to take algebra in order

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<sup>69</sup> L. Wise et al. “High School Examination (HSEE): Supplemental year 1 Evaluation Report.” Prepared for the California Department of Education (Contract Number 9234). Sacramento, CA. August 25, 2000.

to graduate from high school. She notes, albeit obliquely, that implementing the requirement will take considerable effort in terms of teacher training, staff development, and remediation. More serious problems, she notes, are those uncovered by the HumROO evaluation. Tenth grade students “often have not been taught the mathematics and English content that is likely to be on the test.” There are several reasons for this.

- Data collected by the CDE indicate that 30 to 40 percent of high school students never take algebra.
- Courses are not aligned with state standards.
- Teachers’ awareness of the specifics of the examination is relatively low.

The Superintendent concludes by emphasizing that “despite the best efforts of CDE, serious, fundamental, legal issues surrounding the development of the test in California require your (the Governor’s) attention.”

Similar to other policy initiatives of the past five years, HSEE was rushed to implementation in spite of the fact that little was known about its potential effects or how it would align with other high stakes tests. The misalignment of testing becomes even more problematic in view of the PSAA. Should teachers teach to increase the school’s API, or should they teach to the state content standards and help students pass the exit exam?

It is doubtful that either HSEE or PSAA are likely to have much effect on fixing the problems that ail California’s schools. Inadequately staffed schools, non-credentialed teachers, inadequate and outdated textbooks and instructional equipment, and crumbling facilities are not addressed by any of these state initiatives.

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<sup>70</sup> October 11, 2000.

### ***5. Elementary and Secondary Education Act (ESEA)***

In the fall of 2001, Congress reauthorized ESEA under the title *No Child Left Behind Act of 2000*. Consistent with national trends toward accountability, the measure strengthens earlier provisions for states and school districts to develop and implement curriculum content standards. Three of the measure's provisions relate specifically to accountability.<sup>71</sup>

- *Accountability and High Standards.* States, school districts, and schools must be accountable for ensuring that all students, including disadvantaged students, meet high academic standards. States must develop a system of sanctions and rewards to hold districts and schools accountable for improving academic achievement.
- *Annual Academic Assessments.* Annual reading and math assessments will provide parents with the information they need to know how well their child is doing in school, and how well the school is educating their child. Further, annual data is a vital diagnostic tool for schools to achieve continuous improvement. With adequate time for planning and implementation, each state may select and design assessments of their choosing. In addition, a sample of students in each state will be assessed annually with the National Assessment of Educational Progress (NAEP) 4 th and 8 th grade assessment in reading and math.
- *Consequences for Schools that Fail to Educate Disadvantaged Students.* Schools that fail to make adequate yearly progress for disadvantaged students will first receive assistance, and then come under corrective action if they still fail to make progress. If schools fail to make adequate yearly progress for three consecutive years, disadvantaged students may use Title I funds to transfer to a higher-performing public or private school, or receive supplemental educational services from a provider of choice.

How federal legislation is integrated with California accountability requirements remains an open question. Certainly, there is little chance of coordinating various state and federal initiatives with local activities in the absence of a coordinated structure within the state. What is know, however, is that federal regulations impose reporting and assessment requirements

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<sup>71</sup> <http://www.ed.gov/offices/OESE/esea/nclb/part2.html>

on schools. If they are not carefully coordinated within a single program, schools may spend more time and energy satisfying reporting requirements and testing than teaching.

Finally, it is worth noting one more time that none of these assessment requirements—neither state nor federal—is likely to have much impact on changing the underlying conditions of schools. The real issue for policy makers is how various accountability requirements can be integrated into a single, unified mechanism that provides policy makers, the public, but most importantly teachers and school administrators with the kind of information that is most useful for improving teaching and learning.

### ***6. Charter Schools***

Over the past five to six years, California has developed a fairly robust charter school movement. Its purpose is to broaden parental choice and diversify the kinds of schools available to children. Charter school advocates promote them as an alternative to centralized, bureaucratic controls (such as testing and assessment, for instance) in favor of market accountability. While, according to PACE, California is a leader in terms of creating new charter schools, authorizing open enrollment options, and hosting corporate-financed voucher experiments in Los Angeles, Oakland, and San Francisco. However, PACE also notes the paucity of information regarding the efficacy of charters, and while parents seem satisfied with them, “hard evidence of achievement gains, relative to garden-variety public schools, remains scarce.”<sup>72</sup>

Recent newspaper reports about charter school consortia that appear to evade the spirit and purpose of charters should be disconcerting to state policy makers. Law enforcement officials have seized records of charter schools in the course of investigating questionable and perhaps illegal practices.<sup>73</sup>

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<sup>72</sup> PACE, op. cit. p. .85

<sup>73</sup> See, for instance, *San Francisco Chronicle*. Date ?

There are serious flaws both conceptual and operational regarding charter schools as a means of accountability. One study points out that “Unlike vouchers, there was no grand theory to support charter schools; no Milton Friedman or Christopher Jencks to give them intellectual respectability; no shift in the rhetorical ground to accompany their emergence; and no empirically-based discussion on the order of *Politics, Markets and America’s Schools* to justify them.”<sup>74</sup> Undermining market theory assumptions about charter schools is the fact that they are driven by supply rather than demand. Public funds are available to those who want to open charter schools, but there appears to be no credible oversight mechanism in place to see if schools are, indeed, meeting the terms of their charters. As one charter school critic noted, “they socialize costs and privatize profits.”<sup>75</sup>

The creation of charter schools has created yet another delivery system for education services without any evidence of their efficacy and without any systematic state oversight system. School districts are already stretched to oversee regular schools seem to have little capacity to extend their oversight responsibilities to charters.<sup>76</sup>

## **V. The Political 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. Created as legal entities, school districts were delegated authority to levy taxes, enter into contracts, and to 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

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<sup>74</sup> R. Bulman and D. Kirp in S. Sugerman and F. Kemerer, eds., *School Choice and Social Controversy: Politics, Policy and Law* 36, 52-62 (1999). Cited in Yudof et al. op. cit.

<sup>75</sup> A. Molnar, 54 *Education Leadership*, 9 (October 1996). Cited in Yudof et al. op. cit.

<sup>76</sup> See generally R. Bulman and D. Kirp, op. cit.

school superintendent. The scope and quality of educational services in a district was determined primarily by local preferences for education and the capacity to pay for them.

While local districts were given broad authority to shape the basket of education goods in their communities,<sup>77</sup> 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,” 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.<sup>78</sup> The state required districts to levy a certain level of tax and to pay its teachers a minimum salary.

In addition to the formal authority of the state, there were informal institutional mechanisms for oversight. School accreditation was one. School accreditation was through a voluntary organization, the Western Association of Schools and Colleges (WASC) provided schools a means for self and peer evaluation. However, WASC evaluations rarely looked beyond minimum standards—mostly input standards. Other informal accountability mechanisms included the University of California’s admissions requirements. High school courses satisfying the University’s so-called A–F requirements had to be approved and certified by the University. UC routinely sent the grades of first-year students to their former high schools. Student scores on Advanced Placement, SAT, and ACT tests were also informal means of oversight, at least in allowing schools to compare themselves to other schools. Similarly, tests like the Iowa Test for Academic Achievement and later the California Assessment Program allowed school districts to compare their students to those in other districts. These were not “high stakes” tests: persistently

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<sup>77</sup> See C.M. Tiebout, “A Pure Theory of Local Expenditures,” *Journal of Political Economy*, 64, No. 5 (October 1956); 416-417

<sup>78</sup> PACE op. cit. p.80

low scores in persistently low-achieving schools had no specified consequences. On the other hand, in communities that cared about test scores, they often had consequences for local school officials.<sup>79</sup>

Even in times of perceived crises in education, state and federal officials were reluctant to interfere with local authority. The national response to the threat of Russian scientific superiority, the National Defense Education Act, was very careful not to intrude onto local territory. Oversight activities tended to take the form of capacity building--professional development and technical support. State intrusion into local matters, particularly as they related to teaching and learning was relatively unknown, especially in California. The concept of local, political control based on the idea that school districts reflected household preferences for different market baskets of public goods was the foundation on which state oversight of education rested.

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 two-fold. They increasingly shifted decision making from local districts to the state. *Centralization* of authority, however, did not lead to *concentration* of authority. Rather than integrating authority, policy makers dispersed authority among various agencies. In the 1950s, then-SPI, Roy Simpson, was a member of the governor's cabinet. He was also the executive officer of the State Board of Education, which was responsible for directing the work of the State Department of Education and was the governing board for the state colleges (previously normal schools) and the community colleges. Textbook selection, teacher licensing and certification, and curriculum standards development

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<sup>79</sup> It should be noted, however, that schools in high SES communities generally scores well on tests due to the correlation between SES and test scores.

were integrated in one organization. There are few known instances of the legislature taking policy action that was not initiated by the SPI and State Board.

Currently, there are separate governing boards for the state university and community colleges. Teacher licensing and certification is under its own commission. Since Bill Honig's tenure as SPI, the State Board of Education has been at war with the Superintendent. 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. The current SPI has little or no authority, is generally excluded from state-level policy making, and is 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 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 below.

The Serrano decision<sup>80</sup> 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 in

order 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 percent, limited the property tax rate to 1 percent of the assessed value and held annual property tax increases to 2 percent. Any new taxes must be approved by two-thirds of the voters. (This last provision was modified last year to 55 percent for bond elections.) Its impact was to create a state school finance system. Combined with the limitations imposed on districts by *Serrano*, district capacity to generate funds for education is for all practical purposes non-existent. 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.<sup>81</sup> Local officials no longer 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.

The measure of this change is illustrated by local expenditures for lobbying. Between January 1999 and December 2000, education interests spent \$27.5 million on lobbying officials in Sacramento. One would expect textbook publishers, test makers and teachers' unions (the California Teachers' Association, for instance, spent \$5.7 million) to buy influence. However, the larger share of lobbying money did not come from special interests, but from school districts, community colleges, and county offices of education. Los Angeles Unified School District spent

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<sup>80</sup> *Serrano v. Priest*, 5 Cal. 3<sup>rd</sup> 584 (1971) and *Serrano II* 18 Cal 3<sup>rd</sup> 728 (1976)

<sup>81</sup> Legislative Analyst, "K-12 Master Plan: Starting the Process ([www.lao.ca.gov/1999\\_reports/0599\\_k-12\\_master\\_plan.htm](http://www.lao.ca.gov/1999_reports/0599_k-12_master_plan.htm))

\$ 883,822, the Los Angeles County Office of Education spent \$433,950, the Long Beach Unified School District spent over \$319,000, while San Francisco Unified spent over \$248,000 and Oakland Unified spent just under \$164,000.<sup>82</sup>

Proposition 98. Passed by voters in 1988, it 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. While it has provided a guaranteed base, it has also become a ceiling for K-12 and community college funding. Perhaps its greatest impact, which will be discussed more fully below, has been to use the state budget as a policy tool. Because policy makers do not know how much money will be available for the following year's budget and because 40 percent of the money has to go to K-12 and community colleges, there is a last-minute scramble, as illustrated with the class-size reduction measure, to spend the money. Rather than putting the money into general revenues for schools, they are increasingly targeted for special purposes. While such decisions may have significant impact 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. According to the California Commission for Educational Quality, California already had statutes

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<sup>82</sup> [www.ss.ca.gov/prd/lobreport00\\_8qtr](http://www.ss.ca.gov/prd/lobreport00_8qtr)

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 original provisions related to terms of employment and working conditions have been expanded through appeals processes and new laws so that scope now covers many more topics. Collective bargaining contracts now typically cover a wide range of issues, most of which affect local capacity for service delivery. Issues related to compensation include cost-of-living adjustments, salary schedules, pay for specific duties, minimum teacher salaries, mentor teacher selection process, 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 process, mediation and arbitration; discipline procedures and criteria; layoff and reemployment procedures; organization security; and a variety of other topics.<sup>83</sup>

In its review of West Contra Costa Unified School District in July, 2001, FCMAT concluded that collective bargaining practices (along with the district's organizational structure) were serious impediment to student achievement. The study determined that

“In its current state, the Contractual Agreement Between (sic) the West Contra Costa Unified School District and the United Teachers of Richmond appears to constrain the district's ability to foster pupil achievement. Professional development, personnel evaluations, staff collaboration time, the length of the workday—each of these areas is covered by collective bargaining agreement and shows evidence of hampering the common district goal to increase students' academic performance.”<sup>84</sup>

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<sup>83</sup> See EdSource, “Collective Bargaining: Explaining California's System” in Current Policy Readings: K-12 School Reform in California. Palo Alto, CA. 1999

<sup>84</sup> Fiscal Crisis Management Assistance Team. “West Contra Costa Unified School District Assessment and Improvement Plan. Office of the Kern county Superintendent of Schools. July 2001.

According to PACE, “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.<sup>85</sup> 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. The effect of collective bargaining on teaching and learning is illustrated by a pervasive provision of collective bargaining—balancing class loads. For example, a high school history teacher who teaches five classes of history may not have more than, say, a variance of five students in the five classes. If she has a class of 25 students in one class and 31 in another (or for that matter 19) students have to be moved around in order to bring the teacher’s load among all her classes into “balance.” Similarly, all history classes must be balanced within a variance of five students. If they are not, students are moved to other classes until a balance is reached. Because school administrators have 60 days in which to comply with this requirement, students are often moved around to new classes and new teachers after 60 days. There is a safety valve to this provision and that is that teachers may sign waivers. However, teachers report considerable union and peer pressure not to do so.

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 five, the legislature has shifted an increasingly larger share of state monies into categorical grants. These are restricted funds that may only used for special purposes. In 1980, approximately 13 percent 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 also, there were 19

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<sup>85</sup> PACE, *op. cit.* pg. 81

categorically funded programs. In the 2001-02 budget, there are 89 categorically funded programs and such funds represent about 35 percent of general fund subventions to districts.

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 how funds must be expended has resulted in legislative micro-management 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 department of education 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.<sup>86</sup>

Federal education policy. Federal education policy amplifies the effects of state categorical funding. Federal funds come with lots of strings attached regarding their use, 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 students sitting on the floor was

specifically called for in a teachers' 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 contained provisions that further invade local decision making. States and schools are required to develop academic standards for all students, are required to test students. Low-performing schools that fail to show improvement over time may be “reconstituted”—teachers and principals replaced, or conceivably they could be shut down.

Increasing legislative intervention. For the past two 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 six to seven years. PACE notes that not only were initiatives of the past seven years “unprecedented in terms of the consensus they represented among an otherwise divisive body,”<sup>87</sup> but they also indicated an unusual level of intervention and top-down control by state-elected officials into the affairs of curriculum policy.<sup>88</sup>

Some analysts have describes the 1990s as “a tumultuous decade for public education in California.”<sup>89</sup> Over the course of the decade teachers and local school officials have had to manage education programs while attempting to respond to a blizzard of new legislative initiatives. As analysts point out, the state has introduced numerous major new reforms and programs, some aligned to larger goals while others are not.<sup>90</sup> The major thrust of these reforms have been under the heading of “standards-based reform,” most of which, though not all, have been introduced since 1995. The theory of standards-based reform is that the state adopt

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<sup>86</sup> See Rober Kagan, “Regulating Schools and Regulating Business. Also, more generally, D. Kirp and D. Jensen , *School Days, Rule Days*, and Thomas Timar, “Federal Education Policy and Practice: Building Organizational Capacity through Chapter 1. *Education Evaluation and Policy Analysis*, Spring 1994, Vol. 15, No. 1, pp. 51-66.

<sup>87</sup> PACE op. cit. p. 83

<sup>88</sup> California statute specifies that reading must be taught by means of phonics.

<sup>89</sup> EdSource, op. cit.

<sup>90</sup> EdSource op. cit. p. 2

curriculum standards which, 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 policy makers responded by developing the California Learning Assessment System (CLAS) to replace it. Its 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, 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. Policy makers 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, while central to the state's education reform portfolio, are not currently assessed in the Stanford 9, a nationally normed reference-base test. Stanford 9, in its ongoing mutated form to incorporate assessment of state standards, is now an integral part of the state accountability system.

Over the past five years, schools have been flooded with a blizzard of 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 in order to receive a diploma. The State Board of Education requires all students to take algebra in the 8<sup>th</sup> 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.

While 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 to 3 to not more than 20 pupils per teacher was introduced and passed into law in one day.<sup>91</sup> 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 public and teachers liked it because it reduced class size from an average of 30 to 20. Class size reduction also created a demand for large numbers of new teachers. Since many districts were already having difficulties in staffing classes with credentialed teachers, the measure exacerbated the problem in those districts. Superintendent of Public Instruction, Delaine Eastin, while 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 may 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 that “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.”<sup>92</sup> Another impediment to implementation focused on the capacity of rural districts and districts with severe space shortages to participate in the program.

Legislative Term Limits. In 1990, California voters approved Proposition 140, a statewide initiative mandating term limits for legislative members. The initiative’s intent aimed to reverse the domination of the legislature by “professional” politicians. The impact of term limits has been to decimate expertise within the legislature and to create what legislative insiders call a culture of self-promotion. Prior to term limits, there was a tendency within the legislature for members to specialize and develop expertise in specific areas. Leroy Greene, for instance, was expert in state policies related to school facilities. While some members were advocates for special interests, others developed considerable policy expertise in specific areas. Their ability to do so was based on their longevity in the legislature and the expertise of legislative staff. Prior to term limits, committee staff in the legislature were generally regarded as “protected” from changes in committee membership. The recent trend, however, has been for committee members to bring in their own staff who most often have little or no policy expertise or experience.

Institutional structures in the legislature. Most legislatures have developed various institutional mechanisms to discipline and control the legislative process on the one hand and to provide expertise on the other. Committees, caucuses, procedural rules, omnibus bills are internal, organizational mechanisms to exert control over the legislative process. Committee staff, the Legislative Analyst’s Office, Legislative Council, the Senate and Assembly offices of research are means of enhancing the expertise and quality of legislative decision making.<sup>93</sup> In

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<sup>91</sup> SB 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.

<sup>92</sup> California State Legislature, internal memorandum. March 1998.

<sup>93</sup> See, for instance, Carol Weiss, *Organizations for Policy Analysis*. Newbury Park, CA: Sage. 1992

addition to imposing term limits, Proposition 140 in 1990, also mandated reductions in legislative expenditures by roughly 40 percent. The legislature implemented the measure by significantly downsizing its policy making infrastructure. Many long-time consultants were given “golden handshakes” while others were laid off. The Legislative Analyst and research offices, which traditionally played important roles in the legislative process, were significantly affected. As the legislative agenda becomes more complex, expertise has diminished.

The loss of institutional infrastructure within the legislature has resulted in a significant diminution of expertise. Prior to the 1990s, there was an oversight process within the legislature. Long-term staff and members of the legislature could exercise some control over the policy process and, thereby, the quality of policy. They could, for instance, call attention to measures that undermined or contradicted existing ones. However, evidence for the impact of changes in legislative processes since 1990 is mostly anecdotal. In the absence of systematic study, it is difficult to draw very firm conclusions about the long-term impact of Proposition 140 on the legislative process.

## **VI. Configurations of Control and K-12 Oversight**

The trajectory of education governance over the past 20 years has shifted decidedly toward state policy makers. Increasingly, decisions traditionally left to local communities and school officials are now made at the state level. However, 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 the authority of local officials by shifting authority to more distant reaches of government. Thus, while 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.

Centralized decision making has not led to greater consistency or coherence. In fact, compared to 50 years ago, the effect has been just the opposite. At the state level authority is widely dispersed and is often contentious. The battle between Bill Honig and the State Board of Education exemplifies how political issues supersede the education interests of children in the state. A recent study conducted by the California State Auditor concludes that

ongoing conflicts between the board and the superintendent about their respective roles and responsibilities have negatively affected all aspects of the STAR program. Implementing the programs has been especially difficult because, due to these conflicts, the superintendent has never developed an annual implementation plan, as state law requires.<sup>94</sup>

Within the complex system of governance that has developed in the state, there is provision for various forms of oversight. There is no shortage of oversight responsibility scattered among various divisions of the CDE, among various agencies, and county offices and local districts. Two features of the present structure of oversight stand out. The first is that schools have become enmeshed in a massive regulatory superstructure. In the absence of a coherent system of governance, there is instead a loosely connected system of state and local organizations and agencies that are tied together by myriad rules, regulations, programs, and policies. At the center of this massive system is the legislature that unabatedly attempts to manage the education system at both state and local levels. As previously noted, funding to both the CDE and schools is increasingly restrictive, for specific programs or responsibilities that are minutely defined in legislation. The result is a state system of education that is a “system” only in the most general sense. It is better described as a collection of rules, activities, and disparate organizations. What it lacks as a system is a center, a sense of coherence and consistency.

Increasingly, the state legislature has unwittingly undermined local capacity to deliver education services. It is ironic that schools are held accountable for student performance on the API yet have little control over their resources. They are like puppets on strings controlled by a dozen puppet masters, none of whom communicated with one another. Schools do not control the outcome of collective bargaining, but must live with the results. They have little control over resources, which allocated by formula from the districts, the state, or federal government. The effects of fragmentation and incoherence of state authority are reflected in local practice. The proliferation of categorical programs has created the need for new administrators who are responsible for implementing and overseeing all of these new programs. The organizational structure of most districts does not integrate those programs in any coherent way. Program administrators have limited spans of authority and know and care very little about more encompassing issues of educational quality. Both state policy and local administrative structures narrow the angle of vision for oversight.

Given the incessant penchant for reform, the question that begs to be answered is how K-12 education in California has gotten to be so bad. By almost any measure--the General Accounting Office's school facilities study, comparative measures of student achievement—California's public education system is close to the bottom nationally. The conditions alleged in the *Williams* suit are conditions that one might associate with underdeveloped countries, not California, which, if it were an independent nation, would be the sixth wealthiest in the world. One might expect to find conditions such as those alleged in the suit and documented in the UCLA study in countries in Central and Eastern Europe—nations that have undergone major social, economic, and political upheaval. But, it is difficult to

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<sup>94</sup> California State Auditor. "STAR Program: Ongoing Conflicts between the State Board of Education and the Superintendent of Public Instruction as Well as Continued Errors Impede the Program's Success." Bureau of State Audits. Sacramento, CA. April,

understand how such conditions can exist in the public schools of a state as wealthy as California.<sup>95</sup>

Throughout this paper, I have argued that the state's system of governance is a significant factor in the decline of educational quality in the state. The system, as I have described it, is without a center of gravity. Everyone is in control, yet no one is in control. The state, through the CDE, exercises oversight by means of various instruments such as CCR, PQR, CSRD, II/USP, and various school reports such as the "school accountability report card" specified in AB 961. The legislature attempts to exert control by means of myriad regulations specifying in the most minute detail what schools must do. However, none of these activities are coordinated with one another. They are all independently developed and administered. The legislature has promulgated detailed proscriptions for parents about how they should attend to their children's homework, regulate their television watching, and the like. All these activities have a certain randomness and fecklessness to them. For instance, II/USP is voluntary. The Low Performing School Program is also voluntary. But what happens to the low performing schools that do not participate? Are they left to their own devices? What happens to them if they continue to be low performing?

When questioned about the role of external evaluators under II/USP regulations, Assistant Superintendent for the School Improvement Division in the CDE stated that there was little engagement by the department in the process beyond what was mandated by law. The department made no effort to find out what evaluators were recommending, the quality of those recommendations, the relationship of their recommendations to state curriculum standards, and a

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<sup>95</sup> In fact conditions such as those in California are hard to find in Eastern and Central European countries. Among schools I have visited in that part of the world over the past four years, one was in a small village in a remote part of the Republic of Montenegro. In spite of the community's utter poverty, the school's age, and lack of money for education, the school was

variety of other issues that might reasonably be of interest to the CDE, particularly its division responsible for school improvement. There was no direction from the department to schools regarding the quality reviews. Nor was there any guidance to schools for addressing issues related to impediments to student achievement. To qualify for II/USP funding, schools had to fill in certain blanks and the department simply checked to see if the blanks were filled in. No one judged the overall quality or sensibility of the plans. As long as plans met certain formal guidelines, they were accepted. The Division for School Improvement made no evaluation regarding the content of the plans. As a consequence, there is no feedback to schools regarding their plans for school improvement. Once plans have been submitted, proper procedures followed, and proper blanks filled in, plans are automatically approved. In assessing whether schools have made progress, the department does not look at the various contributing factors that might lead to school improvement, but looks only at the school's score on the API.<sup>96</sup> It is also evident that the school improvement division knows little to nothing about other oversight activities that are carried out by other departments or agencies such as CCR, PQR, FCMAT, and the rest..

School improvement in California can aptly be characterized as proceduralism and compliance monitoring. But, it seems to be relegated to rather limited areas. As in other instances, state oversight focuses on minutia—if forms are properly filled out—and ignores the bigger picture. The CDE likes to report good news: API scores are up, 18 percent of principals thought the external evaluators were responsive to community input, and the like. But rarely is there much discussion about what this all means. The dirty little secret, of course, is that it means very little. It is unlikely that anyone in the department who knows much about educational

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spotless. Though in a remote location, a sixth-grade English class I visited had a young teacher who was totally fluent in English (she learned it at the university), the children all had instructional materials, and places to sit.

improvement and assessment would stick his or her neck out to suggest that increased API scores are connected to higher levels of student learning—that they read better, compute better, develop an appreciation for learning.

## VII. A Pathology of School Governance

The obvious question this study of education governance in California raises is why conditions such as those detailed in the *Williams* suit exist in a state as wealthy as California. There may be various explanations. There are significant funding disparities among districts. Revenues for public education have fallen since Proposition 13 since schools now have to compete with higher education, health and welfare, prisons, transportation, and other public agencies for revenues. While these may be contributing factors, there is little evidence that they are solely, or even largely, to blame.

Conditions such as those in the *Williams* suit have been the subject of litigation in other states, among them Ohio, Texas, and Kentucky. However, those suits focused on inequities in state funding. Property poor districts simply could not afford to offer basic educational services that were common in wealthier districts. Similarly, in Kentucky, districts in the poor eastern parts of the state simply lacked the property tax base to provide adequate education to students. But, this is clearly not the situation in California. Studies have shown that the distribution of revenues across districts is fairly equitable—certainly within the *Serrano* guidelines.<sup>97</sup>

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<sup>96</sup> See *Williams, et. al. vs. State of California*. Deposition of Wendy Harris. Sacramento California. January 25, 2002.

<sup>97</sup> J. Sonstelie, E. Brunner, & K. Ardon, *For Better or for Worse? School Finance Reform in California*. San Francisco, CA: Public Policy Institute of California. Also T. Timar, "Politics, Policy, and Categorical Aid: New Inequities in California School Finance," in *Education Evaluation and Policy Analysis*. Vol. 16, 1994. J. Kozol, *Savage Inequalities*. There are, of course districts that are able to augment their revenue limit funding with either voluntary contributions or with parcel tax over-rides, however, these represent a fairly small group of districts. However, these additional funds, according to Sonstelie, are under 10 percent of total funding in a district.

Public school spending as a percentage of personal income in California is below the national average, but has been since 1970.<sup>98</sup> Real public school spending per capita in California exceeded the national average until the mid 1970s, when it began to decline. While it dipped below the national average by about 12 or 13 percent in the early 1990s, by 1997 it had again caught up to the national average. When California school spending is compared to other states, schools have not suffered major declines in public support. However, while real spending may not be a determining factor, the transformation of the state's school finance system since Proposition 13 clearly is an important factor. The transformation is a shift from demand-driven to supply-side funding, a shift that turns public finance as was traditionally practiced on its head. Prior to Proposition 13, education spending was largely determined by the cost of providing educational services. School districts built annual budgets based on projected costs and then either increased or decreased their budgets depending on expected revenues. If expected costs exceeded expected revenues, local officials could raise property taxes. The system was demand driven in that the cost of schooling reflected local preferences (limited or expanded by capacity, of course) for quality and types of educational services. Revenue limits and especially categorical programs have altered the relationship between costs and revenues. Under the current funding system, revenues are fixed by each district's revenue limit. Changes to district's revenue limit calculations can only be made statutorily. Categorical funding, now roughly 40 percent of school revenues, targets special needs. Money is allocated to schools on a per pupil basis and may only be used for designated purposes. The pressure is on schools to find ways of spending the money. While there is no systematic analysis of how schools spend categorical dollars, there is lots of anecdotal evidence that schools often have large amounts of money that they cannot spend. Often schools are faced with having to spend significant amounts of money because they

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<sup>98</sup> See Sonstelie et al. op cit. especially pages 93-96.

cannot be carried over to the next year. Thus, significant amounts are expended for programs or projects that are not well conceived and not integrated into a long-range school plan. There are stories about schools having two weeks to spend over 100 thousand dollars to close out the budget year. In that school, there may be out-of-date or insufficient numbers of textbooks, inadequate instructional equipment or supplies, foul and decrepit facilities, yet funds may not be used for those purposes regardless of need. It is particularly ironic that California has moved toward a centrally planned and funded system of education—albeit unwittingly—when the pathologies of such systems are so well documented.

Another anchor on educational quality in California may be the general instability of the school funding system. Proposition 98 was retained for the stability it promised schools. In terms of aggregate numbers, that may be true. At least in years of budget growth, schools know that they will receive about 40 percent of the state’s general fund revenues. However, they do not know what form revenues will take. One year it may be class-size reduction, another low performing schools, yet another professional development. For the past five years, it has been pretty much unpredictable. It depends entirely on how much money is available after the “May Revise”<sup>99</sup> and how the various political constellations are aligned in the education policy universe in Sacramento. The point is that schools still do not have a good idea, beyond revenue limit cost-of-living adjustments (COLAs) how much marginal discretionary funds they will receive from one year to the next. What Proposition 98 has wrought is a funding floor, but it has not lived up to its implied promise to increase schools’ abilities for long-range planning and budgeting. Schools simply live from year to year, from one state budget to the next. As a result school budgeting is opportunistic rather than planned. Districts and schools have neither capacity nor motivation to engage in long-range planning. California schools are in the

unenviable position of living with a finance system that is both unpredictable and inflexible—the worst of all worlds. (See Figure 2.) In Figure 1, California’s governance and finance system falls into quadrant “d,” whereas ideally, it ought to be located in quadrant “a.” As noted earlier, collective bargaining agreements place severe constraints on schools regarding teacher and pupil assignment and budgeting. Schools live with the results of district bargaining and district decisions about resource allocation. Finally, districts have to live with decisions made by the legislature—decisions that are often poorly thought out and difficult to implement and tend to increase the regulatory and reporting burden already on schools.

**FIGURE 2. DIMENSION OF RESOURCE ALLOCATION**

		PREDICTABILITY	
		<i>High</i>	<i>Low</i>
FLEXIBILITY	<i>High</i>	a	b
	<i>Low</i>	c	d

The current system of oversight for K-12 education is not responsible for creating the appalling conditions described in the lawsuit, but neither does it correct them. The lack of correction is attributable to several causes. The first has to do with the organizational fragmentation of both districts and the CDE. Within districts, various programs are disconnected from one another. Special education administrators know little about Title I who know little about Limited English who know little about II/USP. Individuals tend to focus on their narrow areas of responsibility, which entail regulatory compliance. Various categorical program exist in their own spheres, disconnected from the school as a whole. As noted earlier, schools have become collections of programs and activities operating within a complex framework of rules

<sup>99</sup> The May Revise is the final tally of how much state general fund revenues are available for the following year’s budget.

and regulations. A sense of organization along with a sense of common purpose seems lost. Within the CDE much the same conditions appear to prevail. The department itself is organizationally fragmented, various units within the department know little about the purpose or activities of other units, and seem organizationally and administratively feckless in carrying out oversight responsibilities. In part, that may be due to the fact that CDE funding has been reduced significantly over the years. It may also be due to the fact that the department is responsible for the implementation of so many diverse programs that its capacities are stretched to the limit. However, none of these really absolve the CDE and the State Board of Education from their responsibility for oversight. One would imagine that at the top levels of the organization, someone would be looking at the conditions of education in the state. To the contrary, there is little evidence of any systematic effort to gauge the health of the education system as a whole. Even the department's fiscal data mirror the general fragmentation. While it is possible to access fiscal information about individual districts, the department does not have a data base that contains all districts and all sources of revenues.<sup>100</sup>

Another weak link in the structure of state oversight are the instruments themselves. As I argued earlier in this paper, CCR, PQR, WASC, AIP, II/USP are flawed instruments. They focus either too narrowly or on the wrong things. They are principally the instruments of bean counters, and not those of educational reformers. While FCMAT has considerable potential as a tool for evaluating the quality of educational services provided by a district, it is currently used as an ad hoc instrument, to intervene in districts in financial trouble. The state's newest and most highly touted accountability mechanism AIP and II/USP are also seriously flawed. Their potential for improving conditions in schools is quite limited due to fact that they are inherently inadequate. The issue that state policy makers have not yet addressed, but may soon be required

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<sup>100</sup> Apparently the only person in the department who was able to provide such information retired and has not been replaced.

to, is what happens after three years or five years when low-performing schools are still low performing schools. Is the state prepared to take over 500 or even 100 schools? Does anyone believe that there is a reservoir of talent waiting in the wings waiting for the opportunity to take over failing schools?

The fiscal instability that has become the norm over the past decade (in spite of Proposition 98), has been exacerbated by a high degree of policy instability. As noted earlier, major policy decisions affecting schools are made during the budget process, often at the last minute with little public input. While the purpose of legislative committees in the legislature is to monitor the policy process and to provide some form of institutional control, both of those features seem to have been lost. The ink is barely dry on one measure before legislation introduced to change it. Assembly Bill 2160, introduced in the current session, would make the II/USP process subject to collective bargaining, along with textbook and instructional materials selection. Other measures create principal training programs for schools, yet others professional development programs. Schools are flooded with new programs as they are flooded with reporting requirements and testing requirements. Many measures simply create new categorically funded programs that specify in considerable detail how monies may be spent and for what purposes. Assembly Bill 466 (Chapter 737, *Statutes of 2001*) creates a professional development program in reading and mathematics. One of the bill's provisions is to "acquaint teachers with the value in the diagnostic nature of standardized tests." Most experts would agree that standardized tests by their very nature and purpose have no diagnostic value. Assembly Bill 75 (Chapter 697, *Statutes of 2001*), on the other hand, creates a principal training program to be administered by the Superintendent of Public Instruction. The measure's purpose is to provide

“school site administrators with 80 hours of instruction and training,” and provides, among many other provisions, incentive funding. What is unclear about this measure is what it adds to existing administrator training and preparation programs. School principals must currently be certified, which requires participation in a highly proscriptive program. One of the bill’s more risible provisions requires a comparison of participating schools’ API index before and after the training. The measure does not state how that information will be used or of what use at all such information might be. The provision suggests an expectation of increased API scores due to 80 hours of site administrator training. Annually, schools are shell-shocked by a barrage of new legislation, some of it well-intentioned but poorly conceived, some of it benefiting special interests, and some if even helpful..

The entire governance system suffers from a severe, and perhaps terminal, case of institutional fragmentation. As noted earlier in this study, centralization has not concentrated authority. On the contrary, centralization has created diffused arenas for decision making so that it is difficult to locate clear lines of authority and responsibility at any level, but particularly at the state level. The lack of institutional focus creates a rather unstable policy environment. The combination of factors discussed above sketches an educational governance system that makes long-term planning and organizational and professional development neither possible nor desirable. Local school officials are forced to focus on the short-term: showing increased API scores, spending down categorical program funds, responding to endless, legislatively mandated reporting requirements, and complying with myriad rules covering just about everything from how to act with parents (nice) to how to teach reading (through phonics).

## VIII. Alternatives to the Existing System

### A. Education Governance in other Contexts

While accountability and performance standards have become central to most state policy agendas, there is little systematic, comparative data regarding governance and oversight for education. However, a study conducted in the mid 1990s of eight state education agencies' roles in mathematics and science reform does point to some relevant findings.<sup>101</sup> Most important among them was the importance of policy stability and program continuity. States like Connecticut established a particular policy direction for schools in the mid 1980s. They established a system of oversight for implementation and evaluation. To this day, they have stayed with that strategy and built upon it. The state legislature, once it enacted the comprehensive reform package, generally left the state education agency and districts to focus on instructional improvement. The state education agency was left to develop policies in support of its education reform strategy and was able also to build an infrastructure for its support. While Connecticut differs from California in many respects, it does nonetheless illustrate an important principle about stability and clear definition of responsibility.

The Organization for Economic Cooperation and Development (OECD) has added models of education governance to its indicators of national education systems.<sup>102</sup> OECD suggests that there is a general trend toward decentralizing authority, though different countries are accomplishing this in different ways. Schools, regional, and central authorities in France share power fairly equally. In Hungary, authority is vested mostly in schools with some

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<sup>101</sup> T. Timar, D. Kirp, and M. Kirst, "Institutionalizing Mathematics and Science Reform: Do State Education Agencies Matter?" Study Conducted for the National Science Foundation. WestEd. San Francisco, CA

<sup>102</sup> OECD. *Education at a Glance: OECD Indicators 1998*. Paris. ppg. E5. See also Education Commission of the States. *Governing America's Schools: Changing the Rules*. Report of the national Commission on Governing America's Schools.

decision making shared with municipal authorities. In Spain, decentralization is toward a system in which local educators make all decisions. New Brunswick, Canada has abolished school boards and reorganized governance around parent advisory groups at the school, district, and provincial levels. While there are considerable differences among countries in the configurations of governance, they share some general characteristics. Different levels of the educational system tend to specialize in different areas of governance. Schools are generally involved in issues of instruction while districts and regional units focus on personnel management and resource allocation. The highest levels (principally states in the US) make decisions related to core curriculum requirements, content standards, assessments, credentialing, and quality monitoring.

It is important to note, that comparisons across states and especially across nations are very difficult to make. There are significant differences in cultures, politics, and economic conditions. However, it is possible to generalize about the general structure of education governance in various contexts and the directions in which they are moving. The European Union, for instance, has adopted the principle of “subsidiarity” as a guiding tenet for governance generally. Subsidiarity simply means that decisions ought to be made closest to the people who are directly affected by them. For education it means that most decisions about teaching and learning ought to be made at the local level.

## **B. A Conceptual Framework for Governance**

Lessons from recent state education reform efforts suggest that a major shift in policy needs to occur. Policy makers must focus attention to making schools better places in which to work and learn. Though there are no formulas to achieve this, there is a theoretical basis for improving the organizational competence of schools.

The principles of such reforms are based on several premises. Chief among them is the

proposition that schools as organizations—not teachers or students or curricula—are the principal targets of reform. (This is also consistent with current the current structure of school accountability.) Tightening curriculum standards, increasing testing, and ratcheting up teacher certification requirements may mean nothing if schools lack the competence to make use of better qualified teachers and improved curricula. Quality education comes from sound organizations operating within a supportive institutional environment, not from disparate programs. Packaging more and more programs in response to specific educational problems, the strategy of the past 30 years, is a failed strategy. A lesson that policy makers should heed is that organizational culture cannot be circumvented. High quality education programs cannot exist in dysfunctional schools.

There must also be a clear delineation of authority and responsibility among those who shape the institutional character of schools. State-level policy makers, local school officials, teachers, administrators, professional organizations figure significantly in creating and maintaining between state oversight authority and local service delivery. High quality education can only be realized if these elements combine to foster schools that are purposive and have the flexibility and competence to allocate and use resources effectively and efficiently.

Authority and responsibility have to be distributed and differentiated across the entire system of education. Central policy makers cannot manage schools. The state has the responsibility for establishing clear expectations and the general education framework to realize them. As we have seen, education policy in California is a hodgepodge of requirements and regulations. Much of them are shaped incrementally and anecdotally in response to some success or horror story or to please a favored interest group. Schools in California spend a great deal of time and energy responding to someone's good idea in Sacramento.

Authority at the local level should be decentralized at the school site. A principle of governance and accountability should be anchored on the premise that everyone in schools is responsible for planning, budgeting, and program evaluation. Budgets are tied to assessment and diagnosis: targeting money where it is most needed. For schools to be held accountable, they have to operate as organizations, not conglomerations of activity centers.

Missing from current discourse about education governance is a conceptual framework to guide such discussions. The Master Plan Committee’s Governance Working Group in its “Final Report,” for instance, clearly articulates the importance of structure, but does not suggest what such a structure might be. In general, the report consists of a number of normative propositions, all of them sensible. But it is difficult to know how to take the next step in developing a structure of governance that incorporates those propositions.

The approach proposed by this paper is to consider governance functionally, to begin with the question of “who does what” rather than “who should do what.” There is no intention here to propose any specific governance structure, but to propose a conceptual framework to guide development of alternative structures of governance.

As noted at the beginning of this paper, responsibility for the delivery of educational services is the responsibility of schools. Schools are the organizational embodiment of state policy in education. The quality of education services delivered by schools is dependent on various factors. All schools must have access to resource flows. They are

- *Finance*: schools must have adequate financial resources to purchase services, instructional materials and equipment; to maintain and, as needed, to acquire new facilities:
- *Personnel*: schools must have well-trained and committed teachers, administrators, non-academic personnel.
- *School infrastructure*: schools must have buildings and various facilities, they

must have instructional equipment, and supplies.

- *Instructional content*: education programs, curricula, books and instructional materials
- *Technical assistance and support*
- *Student flows*: choice, transfer, promotion

In addition to resource flows, schools must have the authority, flexibility, continuity, stability, and expertise to channel resource streams into high quality instructional programs.

If we accept the proposition that schools are responsible for service delivery, we open the possibility for conceptualizing governance alternatives to the present system. By beginning with the school as the organization through which policy is enacted, it allows policy makers to ask the question what kind of governance structure or institutional framework is necessary to assure necessary resource flows and to maximize the organizational effectiveness of schools. Several principles should guide such considerations. They are

- *Subsidiarity*. Decisions should be made at the lowest level of government. Put another way, decisions ought to be closest to individuals who will be affected by them.
- *Accountability*. School should be accountable for the results they produce. However, those results should be meaningful and should be based upon multiple indicators. Various external interventions should be triggered according to such indicators.

- *Balanced instrumentality.* A governance and especially an accountability system should strive to balance administrative/bureaucratic, legal, professional, political/communal, and market controls.<sup>103</sup>
- *Equity based on equal opportunity.* Schools must have the resources to provide each child with an adequate and equal education.
- *Choice.* Within a framework of state-defined standards and curriculum, schools should offer students, parents, and communities choice in the provision of educational services.

To maximize the potential for school effectiveness, a governance system must also have the following characteristics.

- *Flexibility.* Schools should have flexibility to allocated resources according to organizational purpose and need.
- *Stability and continuity.* Schools must have fiscal and programmatic stability. The ability of schools as organizations to develop high quality programs depends upon their ability to plan for resource needs. Stability and continuity are also critical to professional development, teacher recruitment and retention, and goal realization.
- *Predictability.* Uncertainty is the enemy of planning. It is imperative that local officials know how much and what kinds of resources are available to them. This is particularly true for facilities planning.

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<sup>103</sup> See, for instance, D. Kirp, "Professionalization as a Policy Choice: British Special Education in Comparative Perspective," *World Politics* 34 (2). Also J. Adams, and M. Kirst "New Demands and Concepts for Education Accountability," in *Handbook of Research in Educational Administration*. 2000

- *Manageability.* A school governance system should be structured so that administrative and oversight units have a reasonable span of control. This principle should apply to the structure of local education agencies as well as to the state structure.

### *1. Redefining State Responsibility*

Just as schools are responsible for service delivery, the state is responsible for adequate and equitable allocation of those services. That responsibility suggests the following role for the state:

- assuring equal access to high quality education;
- developing content and performance standards
- assessment and monitoring for quality;
- policy planning, educational development, and monitoring policy implementation;

Assuring equal access to high quality education means that a primary obligation of the state is to guarantee adequate resources flows to schools. It also means that the state is responsible for planning and educational development. At a minimum that might mean planning for sufficient number of trained teachers and developing policies that create incentives for individuals to enter the teaching profession, particularly in areas of anticipated shortages. Closely connected to equal access is the need to develop content and performance standards. Without a system to assesses student achievement and program quality, equal opportunity remains an elusive goal. While activities such as monitoring for program quality, policy development and planning, standards setting, and assessment may all be considered the state's responsibility, from a functional perspective, they do not need to be carried out by a single agency or be concentrated within one

administrative unit. Carrying out the general responsibility engages both state administrative and policy making bodies. It necessitates a statutory framework for defining equal access with regard to curriculum, personnel, instructional materials, and facilities, and it also necessitates an administrative structure for implementation and oversight.

Policy planning, education development, standards setting, and system monitoring (assessment) need to occur at the state level. A central issue for state oversight is whether schools provide high quality learning experiences to students in a manner that is both equitable and efficient and that they use resources to maximum effect.<sup>104</sup>

What is the nexus between formal governance and schools? The state makes policies, but only schools can turn them into effective organizational practices. This leads to a formulation of governance that is very different from the one currently in operation. It is a view of policy implementation and oversight that is not comprised of myriad rules and regulations but of an institutional structure in which policy implementation is a process of mediating norms, values, and expectations across different levels of government. Thus, in thinking about alternative structures for educational governance, the driving question ought to be what combination of federal, state, and local resources are needed to build organizationally competent schools, schools that can turn resource flows into effective instructional practices.

In this light, PSAA is inadequate to provide the kind of information that policy makers and local practitioners need. One of the shortcomings of assessments such as SAT9, even with the augmented test, is that they only provide a snapshot of how students are doing. While it may serve as an accountability tool, it falls short of a diagnostic tool. What is also needed is a means of assessment for school improvement in addition to assessment for system-wide performance.

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<sup>104</sup> See W. Norton Grubb, "The Unending Search for Equity: California Policy, The 'New' School Finance, and the *Williams* Case. Draft Manuscript. Graduate School of Education, University of California, Berkeley.

Current assessment mechanisms, even when they are tied to state curriculum standards, will not tell policy makers whether schools and which schools provide rich learning experiences for their children; how they organize curricula and teaching to maximize student achievement; how they serve broader student needs; how they build an organizational culture for learning; how they extend that culture to their communities. These are certainly richer and more meaningful questions for purposes of evaluation and more likely to yield nuanced responses than can be answered by an API. Thus, the reigning concept of “accountability” should be re-conceptualized and broadened to creating a system of monitoring for educational quality.

One means of oversight that is prevalent in other countries, but not in the United States, is the establishment of a professional cadre of school evaluators similar to Her Majesty’s Inspectorate of Schools (HMI) in England.<sup>105</sup> The HMI has inspected education provision in England for over a century. Variations on the inspectorate are common in other countries as well. Current policy in England requires the senior chief inspector to produce an annual report summarizing and commenting on inspections carried out over an academic year. The report may focus from year to year on different dimensions of schools. For instance, the report may focus on mathematics and science one year, language arts and humanities the next, and history and geography the third. The inspectorate model of oversight has as its premise the existence of a cadre of well-educated, highly qualified individuals to evaluate schools for accountability and for program quality and effectiveness. It is important to note that inspectors are not monitors; they do not enforce regulations or compliance. The usefulness of the inspectorate model is that it suggests alternatives to current assessment and accountability practices. Moreover, it raises relevant questions about how information can be collected and used to inform educators and the

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<sup>105</sup> See W. Norton Grubb; D. Lawton & P. Gordon , *HMI*. London, England: Routledge & Keagan Paul. 1987

public how well schools are educating children and in what kind of environment education occurs.

## ***2. Redefining Local Responsibility***

Locating responsibility for delivery of education services with schools, raises questions of what system of networked responsibility is needed to provide them the resources and organizational competence to do their jobs. Within the current system, school districts are presumed to be the link between state policy intent and education services. Districts are presumed to be the support system for schools. Traditionally, decisions about funding, facilities maintenance, curriculum support and the like were made largely at the district level in support of schools. However, the functional concept that justified the school district for the first 100 years of public schooling in California has been vitiated over the past 35 years. As noted earlier in this paper, the political, economic, and public finance theories that supported the “idea” of the district no longer apply. The erosion of political accountability, community choice, and local autonomy undermine the rationale for districts. Those factors combined with variation in types and size of districts make it difficult to derive a common functional definition of districts. Certainly, arguments about economies of scale do not apply to small elementary districts that serve a couple hundred students. Nor do efficiency arguments apply to districts such as Los Angeles, which is nearly the size of some state systems.

It may well be that districts as organizational and administrative units have become anachronisms. The malfeasance and fecklessness of a number of school districts in California, particularly large, urban districts (although they are certainly not alone; small districts can be just as poorly managed) raises serious questions about their role. Los Angeles squandered millions on a contaminated school site. San Francisco spent over \$300 million in bond revenues on current

expenditures, among them custodial salaries. Oakland engaged in school facilities construction without board approval.

It is clear that the concept of the district needs to be redefined. What is it that districts *should* do within a larger institutional governance framework and what is it that they *could* reasonably do? Perhaps a more effective and efficient administrative unit might be a high school with elementary and junior high feeder schools. Such units could be organized within larger regional or, perhaps, county administrative and technical support units. Many of the functions currently assigned to districts could be assigned to regional units. (as could many of the responsibilities currently assigned to the CDE ). An alternative to the elimination of districts in favor of some other type of administrative organization is for policy makers to define in functional terms the responsibilities of districts and give them the authority and capacity (including the capacity to generate resources) to carry them out.

The responsibility and onus of collective bargaining needs to be lifted from districts. Alternatives to collective bargaining might be a state-wide salary schedule (with cost-of-living differentials), and creation of civil service system for K-12 teachers and administrators and classified employees. School employees need to be adequately and fairly compensated. They should also have control over their professional lives and have some say in how their professional responsibilities should be carried out. The current system tilts the balance in favor of unions and creates a culture that undermines professional engagement and responsibility. It simply turns schools into workplaces like an auto shop or factory.

The justification and role of school boards needs to be redefined. Perhaps school advisory committees would provide a closer link between schools and the communities they serve. Clearly, there is a need for schools to connect to their communities, but the present system does

not appear to serve that interest well either. Small voter turnout for board elections, union domination of boards, limited capacity to shape schools according to local expectations question the rationale of the existing system.<sup>106</sup>

Perhaps one step to connecting schools more closely to their communities is by re-establishing the connection between decision making and funding. Limitations on districts imposed by *Serrano*, Proposition 13, and categorical funding leave districts with virtually no discretionary authority over revenues or expenditures. Thus, while the issues in the *Williams* case focus on governance and oversight, it is important also to focus attention on why such conditions exist at all. Knowing about conditions as those alleged in the case is one thing. Having the tools to fix them is another.

## IX. Conclusion

Thirty-some years of policy tinkering have created a governance system that is neither rational, nor coherent, nor functional. The story of the blind men describing an elephant aptly describes the system of oversight in California. Under present circumstances, it would be rather difficult to operationalize the Supreme Court's decision in the *Butt* case, which places responsibility for education squarely in the state's lap. It cannot be done because it is not possible to determine just who the "state" is. The diffusion of responsibility among various state actors and the lack of coordination among them makes oversight either everyone's or no one's responsibility. The State Legislature, particularly since imposition of term limits, has become increasingly proscriptive, limiting local autonomy and enmeshing schools in an increasing web of rules, regulations, reporting requirements, and student testing. Indeed, if the present trend

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<sup>106</sup> The Twentieth Century/Danforth Foundation. *Facing the Challenge: The Report of the Twentieth Century Fund Task Force on School Governance*. (With a background paper by J. Danzgerger) New York: The Twentieth Century Fund Press. 1992

continues, public education in the state will become a massive paper chase with reports flying about that no one will have time or inclination to read.

Accumulated evidence from research suggests that a robust school accountability system is not likely to evolve simply through promulgation of new policies. What is needed, instead, is institutional reconfiguration. The intention of most past and present accountability strategies is to patch the system in some way. However, it is quite clear that the educational system that developed over the past century is rooted in a political, economic, and social tradition that has been significantly transformed over the past forty years. The failure of policy makers to effect improvement in low performing schools is not because they did not hit upon the right combination of policies. As some researchers suggest, some problems associated with low performing schools are beyond the reach of policy. Instead of focusing on policies, policy makers need to think about institutional redesign. How should roles and responsibilities be allocated within a system of state-local education and what kind of institutional infrastructure best supports such a system.

If Plaintiffs in *Williams v. State of California* are successful, the Court obviously must consider a remedy. Unfortunately, there are no blueprints to offer the Court in search of remedies in the *Williams* case. What the Court may wish to do is develop a set of conceptual guidelines, such as those discussed in this paper. What is clear is that the institutional framework of governance needs to be radically reformed. Further tinkering with new policies to “shape up” schools is not likely to have the desired effect. Increasing regulations is unlikely to have the desired outcome. Policy makers walked that path in the 1970s with scant results to show for it.<sup>107</sup> Issues of equity and legal entitlement should not be defined in terms of *equal allocation of*

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<sup>107</sup> See generally D. Kirp and D. Jensen, op. cit. Also T. Timar and D. Kirp, *Managing Educational Excellence*. Philadelphia: Falmer Press. 1988.

*resources*. It is important to redefine the concept of equity in terms of *access to high quality education services*. Therefore, the very language and policy instruments of educational quality are not expressed in terms of regulations and laws—duties and obligations, but in the language of effective schools. They are framed in terms of what Lon Fuller has called “the morality of aspirations.”<sup>108</sup> Aspirations go beyond regulations as “there is no way a law can compel a man to live up to the excellences of which he is capable.”<sup>109</sup> Excellence, like aspirations generally, are not readily quantified and measured. That is why strategies that rely upon rules and mandates, accounting procedures, and compliance monitoring have little to do with attaining excellence. The goal of excellence, in turn—no matter how loftily articulated—cannot be divorced from the institutional capacity of schools. In the present situation in California, its attainment requires major institutional reconstruction.

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<sup>108</sup> L. Fuller. *The Morality of Law*. New Haven. 1964.

<sup>109</sup> *ibid*

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