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Electronically FILED by
Superior Court of California,
County of Los Angeles
8/21/2026 3:47 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By A. Radillo, Deputy Clerk

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9
10 COUNTY OF LOS ANGELES

11
12 **THE LOUIS D. BRANDEIS CENTER**
13 **COALITION TO COMBAT ANTI-**
SEMITISM, INC., MELISSA
14 **ALEXANDER, on behalf of herself and her**
minor child, IVY CHESSER, and her son
15 **Y.Z., ILANA PEARLMAN, on behalf of**
herself and her minor children, DAWN
16 **AND MICHAEL ROSENTHAL, on behalf**
of themselves and their minor child, and
17 **JOHN AND JANE SMITH, on behalf of**
themselves and their minor child,

18 Plaintiffs,

19 v.

20 **STATE OF CALIFORNIA, STATE**
21 **BOARD OF EDUCATION, CALIFORNIA**
22 **DEPARTMENT OF EDUCATION, TONY**
23 **THURMOND, in his official capacity as**
State Superintendent of Public Instruction,
24 **and ROES 1-10, inclusive,**

25 Defendants.
26
27
28

Case No. 26STCV06327

**STATE OF CALIFORNIA AND STATE
BOARD OF EDUCATION'S
DEMURRER TO THE FIRST AMENDED
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Declaration of Demurring Party filed
concurrently]

Date: December 3, 2026
Time: 9:30 a.m.
Dept: 14
Judge: The Honorable Bruce G. Iwasaki
Trial Date: N/A
Action Filed: February 26, 2026

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Please take notice that on December 3, 2026, at 9:30 a.m. in Department 14 of the above-entitled court, located at 312 N. Spring Street, Los Angeles, CA 90012, the Court will hear the Demurrer of defendants State of California and State Department of Education, who will and hereby do move the Court for an order sustaining their demurrer to the First Amended Complaint filed by the above-named plaintiffs without leave to amend.

The parties met and conferred but were unable to reach an agreement. (See Code Civ. Proc. § 430.41, subd. (a)(3)(A).)

Respectfully submitted,

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1 **STATE OF CALIFORNIA AND STATE BOARD OF EDUCATION’S DEMURRER**

2 As provided by Code of Civil Procedure section 430.10 and Rules of Court, Rule 3.1320,
3 defendants State of California and State Board of Education demur to Plaintiffs’ First Amended
4 Complaint on the following grounds:

5 **General Demurrer**

6 1. The entire complaint does not state facts sufficient to support Plaintiffs’ claims
7 because the State of California and State Board of Education are not proper parties. (Code Civ.
8 Proc., § 430.10, subd. (e).)

9 2. The entire complaint does not state facts sufficient to support Plaintiffs’ claims
10 because the case is not justiciable. (Code Civ. Proc., § 430.10, subd. (e).)

11 3. The entire complaint does not state facts sufficient to support Plaintiffs’ claims
12 because judicial abstention is applicable. (Code Civ. Proc., § 430.10, subd. (e).)

13 4. The entire complaint does not state facts sufficient to support Plaintiffs’ claims
14 because Plaintiffs fail to plead the necessary elements of all claims. (Code Civ. Proc., § 430.10,
15 subd. (e).)

16 **Specific Demurrer**

17 **Demurrer to the First Cause of Action Under the Equal Protection Clauses of the California**
18 **Constitution (Cal. Const., art. I, § 7(a), and art. IV, § 16(a))**

19 1. The first cause of action does not state facts sufficient to constitute a cause of
20 action because the State of California and State Board of Education are not proper parties. (Code
21 Civ. Proc., § 430.10, subd. (e).)

22 2. The first cause of action does not state facts sufficient to constitute a cause of
23 action because the claim is not justiciable. (Code Civ. Proc., § 430.10, subd. (e).)

24 3. The first cause of action does not state facts sufficient to constitute a cause of
25 action because it is subject to judicial abstention. (Code Civ. Proc., § 430.10, subd. (e).)

26 4. The first cause of action does not state facts sufficient to constitute a cause of
27 action because the claim does not allege a violation by the State of California or the State Board
28 of Education. (Code Civ. Proc., § 430.10, subd. (e).)

1 **Demurrer to the Second Cause of Action Under the Equal Protection Clause of the**
2 **California Constitution (Cal. Const., art. I, § 7)**

3 1. The second cause of action does not state facts sufficient to constitute a cause of
4 action because the State of California and State Board of Education are not proper parties. (Code
5 Civ. Proc., § 430.10, subd. (e).)

6 2. The second cause of action does not state facts sufficient to constitute a cause of
7 action because the claim is not justiciable. (Code Civ. Proc., § 430.10, subd. (e).)

8 3. The second cause of action does not state facts sufficient to constitute a cause of
9 action because it is subject to judicial abstention. (Code Civ. Proc., § 430.10, subd. (e).)

10 4. The second cause of action does not state facts sufficient to constitute a cause of
11 action because the claim does not allege a violation by the State of California or the State Board
12 of Education. (Code Civ. Proc., § 430.10, subd. (e).)

13 **Demurrer to the Third Cause of Action Under the Free Exercise Clause of the California**
14 **Constitution (Cal. Const., art. I, § 4)**

15 1. The third cause of action does not state facts sufficient to constitute a cause of
16 action because the State of California and State Board of Education are not proper parties. (Code
17 Civ. Proc., § 430.10, subd. (e).)

18 2. The third cause of action does not state facts sufficient to constitute a cause of
19 action because the claim is not justiciable. (Code Civ. Proc., § 430.10, subd. (e).)

20 3. The third cause of action does not state facts sufficient to constitute a cause of
21 action because it is subject to judicial abstention. (Code Civ. Proc., § 430.10, subd. (e).)

22 4. The third cause of action does not state facts sufficient to constitute a cause of
23 action because the claim does not allege a violation by the State of California or the State Board
24 of Education. (Code Civ. Proc., § 430.10, subd. (e).)

25 **Demurrer to the Fourth Cause of Action For Writ of Mandate (Code Civ. Proc., §§ 1085(a)**
26 **and 1086)**

27 1. The fourth cause of action does not state facts sufficient to constitute a cause of
28 action because the State of California and State Board of Education are not proper parties. (Code

1 Civ. Proc., § 430.10, subd. (e).)

2 2. The fourth cause of action does not state facts sufficient to constitute a cause of
3 action because the claim is not justiciable. (Code Civ. Proc., § 430.10, subd. (e).)

4 3. The fourth cause of action does not state facts sufficient to constitute a cause of
5 action because it is subject to judicial abstention. (Code Civ. Proc., § 430.10, subd. (e).)

6 4. The fourth cause of action does not state facts sufficient to constitute a cause of
7 action because the claim does not allege a violation by the State of California or the State Board
8 of Education. (Code Civ. Proc., § 430.10, subd. (e).)

9 **Demurrer to the Fifth Cause of Action For Writ of Mandate (Code Civ. Proc., §§ 1085(a)**
10 **and 1086)**

11 1. The fifth cause of action does not state facts sufficient to constitute a cause of
12 action because the State of California and State Board of Education are not proper parties. (Code
13 Civ. Proc., § 430.10, subd. (e).)

14 2. The fifth cause of action does not state facts sufficient to constitute a cause of
15 action because the claim is not justiciable. (Code Civ. Proc., § 430.10, subd. (e).)

16 3. The fifth cause of action does not state facts sufficient to constitute a cause of
17 action because it is subject to judicial abstention. (Code Civ. Proc., § 430.10, subd. (e).)

18 4. The fifth cause of action does not state facts sufficient to constitute a cause of
19 action because the claim does not allege a violation by the State of California or the State Board
20 of Education. (Code Civ. Proc., § 430.10, subd. (e).)

21 Dated: August 21, 2026

Respectfully submitted,

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25 /s/ Andrew Edelstein
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INTRODUCTION

Plaintiffs' lawsuit has the admirable goal of addressing antisemitism in California schools, but the Legislature and Governor did just that by enacting Assembly Bill (AB) 715, effective this year. AB 715 addresses Plaintiffs' concerns by strengthening anti-discrimination protections and creating robust antisemitism-specific resources, including the creation of an Office of Civil Rights (OCR) with an Antisemitism Prevention Coordinator responsible for providing antisemitism training, guidance, and incident response across public schools. Plaintiffs take no issue with AB 715 and are not suing to enforce it. Thus, the first basis to dismiss the First Amended Complaint (FAC) is that the case is not justiciable, as AB 715 already provides the relief Plaintiffs seek.

The second basis for dismissal is judicial abstention. The relief Plaintiffs seek would have the Court usurp the role of the OCR with sweeping injunctive relief seeking to eradicate antisemitism statewide, but that is the charge of the OCR. The relief sought would also require the Court to continually monitor the effectiveness of those efforts. This relief is neither practicable nor proper under principles of separation of powers, which warrants abstention.

The third basis for dismissal is that Defendants are not proper parties. In a case like this, the State of California (the State) is not a proper defendant; rather, the agency (local or state) with a direct institutional interest is. The State Board of Education (SBE)—a policymaking body—is likewise not a proper party. Plaintiffs seek compliance with and enforcement of antidiscrimination laws and procedures, which is outside SBE's domain.

The final basis for dismissal is failure to state a claim. The equal protection and free exercise claims under the California Constitution fail to allege any discriminatory or burdensome action or inaction by Defendants. The two writ claims fail because Plaintiffs do not identify any duty, let alone a clear and ministerial duty, of the State or SBE. The constitutional provisions Plaintiffs rely on do not require the government to take a specific action, but rather to administer public schools in a way that does not deny equal protection or interfere with free exercise. The provisions Plaintiffs cite do not apply to the State or SBE and do not create any duty.

Accordingly, the State and SBE respectfully request that the Court sustain their demurrer without leave to amend.

FACTUAL BACKGROUND

The FAC alleges incidents of antisemitic discrimination by teachers, administrators, staff, or students in public schools and local educational agencies (LEAs)¹ and contends that the state-level Defendants have not adequately addressed that discrimination. (See FAC, ¶¶ 29–134.) Plaintiffs seek a writ of mandate and equitable relief under the equal protection and free exercise clauses of the California Constitution compelling the enforcement of California’s laws prohibiting discrimination in public schools as to Jewish and Israeli students. (*Id.* at pp. 51–66.)

STANDARD OF REVIEW

A complaint is subject to demurrer where it fails to “state[] facts sufficient to constitute a cause of action.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) A court must take as true “all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law,” and must “consider matters which may be judicially noticed.” (*Ibid.*)

ARGUMENT

I. THIS CASE IS NOT JUSTICIABLE

A case is not justiciable where the court cannot “grant . . . any effectual relief.” (*Cuenca v. Cohen* (*Cuenca*) (2017) 8 Cal.App.5th 200, 217; *D.K. v. Off. of Admin. Hearings* (2024) 101 Cal.App.5th 1206, 1213.)² Further, courts cannot issue a writ of mandate that is not “necessary,” including where it would be “useless” or have “no practical benefits,” where the defendant “has an obligation to act under another law,” or where “the petitioner’s rights are otherwise protected.” (*Cal. High-Speed Rail Auth. v. Super. Ct. (High-Speed Rail)* (2014) 228 Cal.App.4th 676, 707.)

The relief Plaintiffs seek is *already mandated* by AB 715, a comprehensive law effective January 1, 2026 that combats antisemitism in public schools. ([Assem. Bill 715 \(2025–2026 Reg. Sess.\)](#).) Plaintiffs seek to compel Defendants to publish reports about antisemitism complaints; to ensure LEAs do not adopt antisemitic curricula and professional development materials or

¹ The term “local educational agency” includes school districts. (Ed. Code, § 56026.3.)

² These cases applied the “effectual relief” rule under the label of “mootness,” but that term is inapplicable. Mootness occurs when a court loses the ability to grant effective relief *after* a case was filed (see *Cuenca, supra*, 8 Cal.App.5th at p. 217), but this brief argues the Court already lacked that ability *prior* to this case. Thus, this brief uses the broader term “justiciability.”

1 discriminate via application of their policies; to appoint an officer with “expertise” in
2 antisemitism to ensure LEAs are not engaging in antisemitic discrimination; to provide “targeted
3 resources, funding, and technical assistance” to prevent antisemitism; and to provide antisemitism
4 training for teachers, administrators, and staff. (FAC, pp. 65–66.)

5 AB 715 addresses these concerns and delegated that responsibility to the OCR. Among
6 other things, the law requires “publicly available” reporting on each type of discrimination in
7 schools (AB 715, § 5 [creating Ed. Code, § 33802]); strengthens statutory prohibitions on
8 instructional, professional development, and curricular materials that would subject students to
9 antisemitism or that are factually inaccurate (*id.* § 2 [amending Ed. Code, § 244], § 7 [amending
10 Ed. Code, § 51500], § 8 [amending Ed. Code, § 51501]); and creates the OCR with the mission of
11 addressing discrimination in schools, which will employ an “Antisemitism Prevention
12 Coordinator” (to be appointed by the Governor and confirmed by the Senate) (*id.* § 5 [creating
13 Ed. Code, §§ 33800–33804]). That official will provide resources and training to “teachers, staff,
14 governing board or body members, administrators, and other [LEA] personnel to identify and
15 proactively prevent antisemitism”; make legislative and policy recommendations and reports
16 pertaining to the prevention of antisemitism; work with community stakeholders; and engage with
17 LEAs concerning the handling of antisemitism. (*Ibid.*)

18 Crucially, Plaintiffs do not take issue with AB 715 or bring their claims pursuant to that
19 law. Indeed, they have stricken references to AB 715 from the body of their amended complaint,
20 now only citing the law in a single footnote. (Compare Compl., ¶ 4, with FAC, ¶ 132 fn. 91.)

21 The rights Plaintiffs assert are “otherwise protected” by AB 715, which provides the relief
22 they seek. (See *High-Speed Rail*, *supra*, 228 Cal.App.4th at p. 707.) The Court can provide no
23 effective relief and this case is not justiciable. (See *Cuenca*, *supra*, 8 Cal.App.5th at p. 217.)

24 **II. JUDICIAL ABSTENTION IS APPROPRIATE**

25 Even if AB 715 did not provide the relief sought, judicial abstention is warranted because
26 the relief requested would require the Court to “assume” or “interfere with” the “functions of an
27 administrative agency,” and/or would “be unnecessarily burdensome for the trial court to monitor
28 and enforce given the availability of more effective means of redress.” (See *Hambrick v.*

1 *Healthcare Partners Medical Group (Hambrick)* (2015) 238 Cal.App.4th 124, 147–148.)

2 The Legislature created a new state agency—the OCR—which is tasked with addressing
3 antisemitism in public schools via the mechanisms established by AB 715, discussed above. Yet
4 Plaintiffs want the Court to craft sweeping injunctive relief reflecting policy choices about how
5 best to address antisemitism in schools. They request “court-ordered reforms” adopting the
6 specific policy changes they desire—including the creation of a committee of experts to review
7 all ethnic studies materials statewide; a determination that particular LEAs are “recalcitrant” and
8 require targeted resources; data reporting on particular complaint metrics; and court-mandated
9 training for all education personnel statewide, which is to be developed in coordination with the
10 Brandeis Center and StandWithUs. (See FAC, pp. 65–66.) What Plaintiffs seek “would pull the
11 court deep into the thicket” of education policy, which “courts are ill-equipped to meddle in.”
12 (See *Hambrick, supra*, 238 Cal.App.4th at p. 150.) Plaintiffs would have the Court improperly
13 usurp and “interfere with” the role of the agency designated by the Legislature. (See *id.* at p. 147.)

14 Plaintiffs also seek a court-mandated “independent monitor” and periodic “compliance
15 reports” to the Court concerning the effectiveness of efforts to eradicate antisemitism statewide.
16 (FAC, pp. 65–66.) This relief is simply not judicially administrable. The complex task of
17 overseeing statewide efforts to address antisemitism for an extended period of time is one “for
18 which the courts are not well equipped” (*Hambrick, supra*, 238 Cal.App.4th at p. 151) and
19 “would obviously be very time consuming” (*Acosta v. Brown* (2013) 213 Cal.App.4th 234, 252).

20 Abstention will not deprive Plaintiffs of a remedy. As discussed above, AB 715 *already*
21 addresses their concerns via significant statewide reforms. Further, Plaintiffs can seek redress via
22 the Uniform Complaint Procedures (UCP)—the established administrative “system of complaint
23 processing” that covers “unlawful discrimination, harassment, intimidation, or bullying” in public
24 schools (Ed. Code, § 33315, subd. (a))—or by filing a civil action against an LEA for violation of
25 state educational anti-discrimination laws (*id.* § 262.3).

26 For these reasons, the Court should abstain from adjudicating this action.³

27 ³ In the event the demurrer is unsuccessful, Defendants reserve the right to move to stay
28 the case, including under the primary jurisdiction doctrine. That doctrine “applies where a claim
(continued...)

1 **III. THE STATE BOARD OF EDUCATION AND STATE OF CALIFORNIA ARE NOT PROPER**
2 **PARTIES**

3 A state entity is not a proper party where “no relief is available” from that party. (*State of*
4 *Cal. v. Super. Ct. (Veta)* (1974) 12 Cal.3d 237, 255–56.) Instead, the “proper defendant” is the
5 “state [or] local agenc[y]” with a “direct institutional interest” in the “final outcome” of the
6 case. (*Templo v. State of Cal. (Templo)* (2018) 24 Cal.App.5th 730, 736 [quoting *Serrano v.*
7 *Priest (Serrano)* (1976) 18 Cal.3d 728, 752].)

8 **A. Local Educational Agencies, Not State Agencies, Have Primary**
9 **Responsibility for Addressing Incidents of Discrimination in Schools**

10 The complaint is premised on various alleged incidents of discrimination at certain schools
11 and school districts, not any action or policy attributable to Defendants. Yet it is not state-level
12 agencies, but rather LEAs—which are “agencies of the state for the administration of the school
13 system” (*Lacy v. City & County of San Francisco* (2023) 94 Cal.App.5th 238, 255)—that possess
14 “primary responsibility” for “ensuring that [their] programs and activities are free from
15 discrimination” and “monitoring compliance” with state law. (Ed. Code, § 260.)

16 **B. The State of California Is Not a Proper Party**

17 The State of California is not a proper party because it is “not the State as a whole,” but
18 rather specific local or state agencies, “that ha[ve] the ‘direct institutional interest’ necessary to
19 defend the action.” (See *Templo, supra*, 24 Cal.App.5th at p. 737 [quoting *Serrano, supra*, 18
20 Cal.3d at p. 752].) Both the Supreme Court and Court of Appeal have held that the State of
21 California is not a proper defendant in civil actions where, as here, there are specific agencies
22 with an institutional interest in the subject matter of the case. (See *Serrano*, at p. 752; *Templo*, at
23 pp. 736–737.) Accordingly, the State of California is not a proper party and must be dismissed.

24 **C. The State Board of Education Is Not a Proper Party**

25 SBE is likewise not a proper party because it has no power or authority to implement the
26 actions challenged by Plaintiffs or to otherwise enforce antidiscrimination laws. (See *Templo*,
27 is originally cognizable in the courts but involves issues which, under a regulatory scheme, have
28 been placed within the special competence of an administrative body.” (*Bradley v. CVS*
 Pharmacy, Inc. (2021) 64 Cal.App.5th 902, 912 [quotations and citations omitted].)

1 *supra*, 24 Cal.App.5th at p. 736.) The SBE is the “governing and policy determining body” that
2 sets statewide education policy. (Ed. Code, § 33301; see also *id.* § 33030.) SBE’s policymaking
3 duties include “adopt[ing] textbooks for use in grades one through eight” (Cal. Const., art. IX, §
4 7.5) and “mak[ing] plans for the improvement of the administration and efficiency of the public
5 schools” (Ed. Code, § 33032). SBE does not implement the policy it sets, nor does it have any
6 investigatory or enforcement powers.

7 The complaint misunderstands SBE’s role. For one, the bulk of the factual allegations
8 concern the actions of various LEAs, administrators, teachers, and students, without any
9 connection to Defendants. (See generally FAC.) Further, the allegedly unconstitutional acts or
10 omissions complained of are outside SBE’s scope of authority. Plaintiffs allege that Defendants
11 failed to “take action when a local district’s policies or practices deny basic educational equality”
12 and “declined to use their enforcement powers.” (*Id.* ¶¶ 131, 159.) They also allege that
13 Defendants failed to properly investigate and remediate violations of the Education Code’s anti-
14 discrimination provisions, to adequately respond to UCP complaints, and to otherwise ensure
15 schools and LEAs comply with the law in response to incidents of antisemitic discrimination. (*Id.*
16 ¶ 128.) These allegations raise issues that are entirely outside SBE’s purview.

17 Plaintiffs have not cited any provision that gives SBE investigatory or enforcement powers,
18 because no such provision exists. The SBE, as a general policymaking body, does not have
19 authority to enforce the law or otherwise intervene in response to discrimination in schools or
20 LEAs. (See Ed. Code, §§ 33030, 33301; *Comite De Padres De Familia v. Honig* (1987) 192
21 Cal.App.3d 528, 532 [claims seeking to require SBE to “monitor” and “enforce” LEAs’
22 affirmative action programs failed because no statute created such a duty] [cited with approval by
23 *Salazar v. Eastin* (1995) 9 Cal.4th 836, 858].) Hence, even if Plaintiffs prevailed, SBE would
24 have no power to provide the relief sought (see FAC, pp. 65–66). SBE is therefore not a proper
25 party. (See *Veta, supra*, 12 Cal.3d at p. 255.)

26 **IV. PLAINTIFFS FAIL TO ALLEGE SUFFICIENT FACTS TO SUPPORT A CAUSE OF ACTION**

27 **A. Plaintiffs Fail to Plead the First and Second Claims for Equal Protection**

28 The California Constitution guarantees equal protection (see *Butt v. State of Cal. (Butt)*

(1992) 4 Cal.4th 668, 678–679), which ensures that those “similarly situated” are “generally treated similarly by the law” (*Collins v. Thurmond (Collins)* (2019) 41 Cal.App.5th 879, 893). Heightened scrutiny “applies to State-maintained discrimination whenever the disfavored class is suspect or the disparate treatment has a real and appreciable impact on a fundamental right or interest,” including the fundamental right to education. (See *Butt*, 4 Cal.4th at pp. 685–686.)

Plaintiffs’ first and second causes of action allege denial of educational equity and segregation, respectively. The same legal framework applies to both equal protection theories, which both fail for the following reasons.

1. Plaintiffs fail to plead a discriminatory classification by Defendants

“In equal protection analysis, the threshold question is whether [defendants] somehow discriminate[] against an identifiable class of persons. Only then do the courts ask the further question of whether this identifiable group is a suspect class or is being denied some fundamental interest” such that “close scrutiny” is necessary. (*Santa Clara County Local Transportation Auth. v. Guardino (Guardino)* (1995) 11 Cal.4th 220, 258.) If a group is “not being treated differently, then there can be no equal protection violation.” (*Collins, supra*, 41 Cal.App.5th at p. 893.)

Plaintiffs fail to satisfy this “threshold question.” (See *Guardino, supra*, 11 Cal.4th at 258.) The complaint focuses on the alleged discriminatory actions of third parties, including various teachers and school districts. None of that conduct is attributable to Defendants. And there are no facts alleged that plausibly suggest Defendants adopted any classification, let alone what the parameters of that classification are. (See generally FAC.) The complaint merely alleges in conclusory fashion that Defendants “effectively adopted a policy of allowing Jewish and/or Israeli students to be subjected to a variety of attacks from students and teachers.” (*Id.* ¶ 139.)

Rather than a classification or policy, Plaintiffs’ theory is premised on Defendants’ failure to remedy every instance of discriminatory conduct undertaken by third parties. (See *id.* ¶ 140.) This theory is unlike cases finding a classification affecting the fundamental right to education. For example, in *Serrano*, the California Supreme Court found a discriminatory classification where plaintiffs challenged a statewide system that allocated funding based on LEA wealth. (*Serrano, supra*, 18 Cal.3d at pp. 765–766.) In *Butt*, the Court found a discriminatory

1 classification where one school district’s students received six fewer weeks of instruction than
2 other students statewide. (*Butt, supra*, 4 Cal.4th at p. 687.) And in *Collins*, the Court of Appeal
3 found a discriminatory classification where a school district allegedly “adopted and implemented
4 a district-wide disciplinary program that is biased toward minority students.” (See *Collins, supra*,
5 41 Cal.App.5th at pp. 887, 896–897.) Unlike those cases, the complaint here does not point to any
6 classification or policy.

7 Further, even if Plaintiffs had adequately pleaded that Defendants adopted some
8 classification, there are insufficient allegations that an identifiable class was treated differently
9 from other groups of students. There is no suggestion that Defendants treat the students of any
10 LEAs referred to in the complaint differently from the rest of the state’s LEAs. (Cf. *Serrano*,
11 *supra*, 18 Cal.3d at pp. 765–766; *Butt, supra*, 4 Cal.4th at p. 687.) And there are no allegations
12 that Defendants treat Jewish and Israeli students differently than other ethnic groups. (Cf. *Collins*,
13 *supra*, 41 Cal.App.5th at p. 887.) Indeed, there are *no* allegations bearing on Defendants’
14 handling of discrimination against other groups.

15 Because Plaintiffs fail to make the “threshold” showing that Defendants have adopted a
16 classification that treats them differently from other groups (*Guardino, supra*, 11 Cal.4th at p.
17 258), there “can be no equal protection violation” (*Collins, supra*, 41 Cal.App.5th at p. 893).

18 **2. Plaintiffs fail to plead purposeful inaction by Defendants**

19 While state-level parties’ failure to act in response to a school district-level discriminatory
20 policy can, in limited circumstances, constitute a state-level classification for equal protection
21 purposes, those circumstances are not alleged here. In *Collins*, the plaintiffs alleged that one
22 school district’s students were subject to “discriminatory disciplinary proceedings” leading to
23 segregation of minority students, and the state defendants “became aware of the resulting
24 discriminatory impact.” (*Collins, supra*, 41 Cal.App.5th at p. 898.) The court found that plaintiffs
25 stated a claim based on allegations the state defendants were “aware of the bias” and, “rather than
26 correct those biases,” chose to “willfully ignore[] the information.” (See *id.* at pp. 887, 896–897.)

27 Unlike *Collins*, Plaintiffs fail to allege that “no action” was taken “to correct the
28 [challenged] policy when its impacts [were] identified.” (See *id.* at pp. 896–897.) First, the facts

1 alleged do not suffice to establish notice to Defendants in the relevant sense. For example, the
2 complaint alleges that “hundreds of UCP complaints that were filed by Jewish parents” put
3 Defendants “on notice” thereof. (FAC, ¶ 133.) But UCP complaints are never filed with the State
4 or SBE (see Ed. Code, § 33315; Cal. Code Regs., tit. 5, §§ 4600–4694), and therefore could not
5 possibly provide the State or SBE with notice. (See *Carian v. Dep’t of Fish & Wildlife* (2015) 235
6 Cal.App.4th 806, 817 [“California’s state agencies are distinct and separate governmental entities
7 and therefore notice to one does not constitute notice to all.”]; *People ex rel. Lockyer v. Super. Ct.*
8 (2004) 122 Cal.App.4th 1060, 1076–1080 [the State of California does not possess knowledge of
9 or control over the affairs of each state agency or official].) And more broadly, awareness of
10 antisemitism across the state does not establish notice of a particular “policy” necessitating the
11 specific statewide interventions preferred by Plaintiffs. This case is unlike *Collins*, where the
12 plaintiffs challenged one school district’s official discipline policy and pointed to a state agency’s
13 alleged knowledge thereof. Here, Plaintiffs rely on allegations of antisemitism by school district-
14 level actors across the state. Yet they do not seek targeted intervention in response to those
15 incidents—which is available through the state-administered UCP or the filing of civil actions
16 against LEAs—but instead make the leap that those incidents gave notice that sweeping statewide
17 enforcement and reforms touching *every* teacher and *every* LEA employee were necessary. This
18 theory does not hold up as a matter of simple logic. Nor are Defendants capable of providing the
19 enforcement and reforms sought, even if they somehow had notice they were necessary.

20 Second, Plaintiffs fail to allege state inaction. To the contrary, their own complaint
21 demonstrates the opposite. As discussed above, AB 715—referenced by Plaintiffs in a footnote
22 (see FAC, ¶ 132 fn. 91)—is a comprehensive law effective this year that made significant
23 Education Code amendments to remediate and prevent antisemitism in schools statewide. The
24 complaint also references other state-level actions to address antisemitism in schools, including
25 legislative and executive actions targeting antisemitic ethnic studies curricula (*id.* ¶¶ 97–98), state
26 grant funding for training to prevent antisemitism (*id.* ¶¶ 100–101), a letter from SBE’s Executive
27 Director urging school leaders to avoid adopting discriminatory ethnic studies materials (*id.* ¶
28 130(c)), and CDE’s recent enforcement lawsuit against Oakland Unified School District for

1 failure to comply with corrective actions CDE ordered in response to UCP complaints about
2 antisemitism (*id.* ¶ 124). Other examples include a law establishing the Holocaust and Genocide
3 Education Grant Program (Sen. Bill 472 (2025–2026 Reg. Sess.)) and numerous decisions issued
4 by CDE ordering corrective actions in response to UCP appeals about antisemitic discrimination,
5 which are provided by CDE’s briefing.

6 As these examples show, Plaintiffs’ *own complaint* and judicially noticeable facts establish
7 that state-level actors have acted to address antisemitism in schools. Accordingly, they fail to
8 state an equal protection claim premised on failure to act.

9 **3. Plaintiffs fail to plead denial of basic educational equality**

10 The equal protection claims also fail because they do not plead denial of “educational
11 equality” under the applicable standards. In *Butt*, the Court held that equal protection guarantees
12 California students a right to “basic educational equality.” (*Butt, supra*, 4 Cal.4th at p. 685.) The
13 Court recognized that although California bears ultimate responsibility for its public education
14 system, school governance has historically been assigned to school districts. (*Id.* at pp. 680–681.)
15 Thus, state-level actors may be held responsible for denying basic educational equality if they
16 “den[y] the students of one district an education basically equivalent to that provided elsewhere
17 throughout the [s]tate.” (*Id.* at pp. 680–685.) Accordingly, establishing a denial of the right to
18 educational equality requires a comparison between the education being provided in the
19 plaintiffs’ LEAs and the “prevailing statewide standards” being “provided elsewhere throughout
20 the state.” (*Id.* at pp. 686–687.) Because the California Constitution “does not prohibit all
21 disparities in educational quality or service,” an equal protection violation may be found only
22 where the “actual quality” of an LEA’s program, “viewed as a whole, falls fundamentally below”
23 that being provided elsewhere throughout the state. (*Ibid.*)

24 Plaintiffs fail to allege that the quality of education provided in their schools and LEAs,
25 “viewed as a whole,” falls below the standards of education provided across the state. (*Ibid.*) No
26 facts are alleged that allow either “intradistrict” or “interdistrict” comparisons of educational
27 quality. (See *Shaw v. L.A. Unified School Dist.* (2023) 95 Cal.App.5th 740, 765–66.) This is fatal
28 to the equal protection claims, which require such a comparison. “[P]rinciples of equal protection

1 have never required the [s]tate to remedy all ills or eliminate all variances in service.” (*Butt*,
2 *supra*, 4 Cal.4th at p. 686; see also *O’Connell v. Super. Ct.* (2006) 141 Cal.App.4th 1452, 1467.)

3 For these reasons, the demurrer should be sustained as to the equal protection claims.

4 **B. Plaintiffs Fail to Plead the Third Claim Under the Free Exercise Clause**

5 Article I, section 4 of the California Constitution guarantees “[f]ree exercise and enjoyment
6 of religion without discrimination or preference[.]” While the free exercise clauses of the U.S.
7 and California constitutions are not always coterminous, “decisions of the California Supreme
8 Court give ‘respectful consideration’ to First Amendment precedents when analyzing claims
9 under article I [of the California Constitution].” (*Lamar Central Outdoor, LLC v. City of Los*
10 *Angeles* (2016) 245 Cal.App.4th 610, 629 [internal quotation omitted].)

11 The law is not settled as to the standard applied to California free exercise claims. (See
12 *Civil Rights Dep’t v. Cathy’s Creations, Inc.* (2025) 109 Cal.App.5th 204, 272.) But even if strict
13 scrutiny applies, Plaintiffs fail to plead a free exercise claim. (See *N. Coast Women’s Care*
14 *Medical Group v. Super. Ct.* (2008) 44 Cal.4th 1145, 1158.)

15 Under strict scrutiny, a law or policy cannot be “applied in a manner that substantially
16 burden[s] a religious belief or practice unless the state show[s] that the law represent[s] the least
17 restrictive means of achieving a compelling interest or, in other words, was narrowly tailored.”
18 (*Catholic Charities of Sacramento v. Super. Ct. (Catholic Charities)* (2004) 32 Cal.4th 527, 562.)

19 Thus, where a policy does not “substantially burden” religion in the first place, it satisfies
20 strict scrutiny. (*County of San Bernardino v. Mancini* (2022) 83 Cal.App.5th 1095, 1107; see also
21 *Hernandez v. Comr. of Internal Rev.* (1989) 490 U.S. 680, 699 [The “free exercise inquiry asks
22 whether government has placed a substantial burden [on religious exercise] *and, if so*, whether a
23 compelling governmental interest justifies the burden.”] [emphasis added].) A law “substantially
24 burdens a religious belief if it ‘conditions receipt of an important benefit upon conduct proscribed
25 by a religious faith, or where it denies such a benefit because of conduct mandated by religious
26 belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate
27 his beliefs.’” (*Catholic Charities, supra*, 32 Cal.4th at p. 562.)

28 Here, Plaintiffs fail to allege that the Defendants have done anything that “substantially

1 burdens” religion. As discussed above, the conduct complained of is largely attributable to third-
2 party LEAs, administrators, and teachers, while the allegedly unlawful actions or omissions
3 attributed to Defendants are not within the purview of either “the State” or SBE.

4 Further, Plaintiffs’ allegations concerning the existence of a “policy” are unsupported.
5 Plaintiffs merely speculate that the State and the SBE were “on notice” of the incidents
6 complained of and failed to act, and therefrom conclude that they have “maintain[ed] and
7 operat[ed]” the public school system “in a way that unconstitutionally infringes on students’ or
8 parents’ free exercise of religion.” (FAC, ¶¶ 158–159.)

9 This theory fails on two levels. First, as discussed above, the complaint does not establish
10 notice of a particular policy capable of intervention by the State or SBE. (See *supra*, p. 18.)

11 Second, even if notice could be imputed to the State or SBE, there are no facts alleged that
12 plausibly suggest Defendants adopted any policy, let alone what that alleged policy is. (See
13 generally FAC.) For instance, Plaintiffs allege that Defendants have “require[ed] Jewish students
14 and families to restrict their religious beliefs regarding Judaism and Israel” and “encourage[ed] or
15 permit[ed] teachers, administrators, and others to tell their young charges, inter alia, that the
16 Jewish State of Israel and those who support it are demonic, that the State of Israel as a Jewish
17 homeland itself is illegitimate and has no right to exist, that Jews have no real or legitimate
18 connection to the land of Israel, that Jews are Nazis, and that killing Jews is justified.” (*Id.* ¶¶
19 160–161.) No support is provided for these extraordinary assertions. Mere awareness of
20 antisemitic discrimination does not support the conclusion that Defendants adopted a statewide
21 policy of affirmatively allowing or supporting discrimination in a manner that imposed a
22 “substantial burden” on religion. And given the State and SBE’s lack of connection to or
23 authority over the alleged conduct, it is not clear how they could have adopted any such policy.

24 Plaintiffs fail to allege the existence of *any* action or policy attributable to Defendants, let
25 alone one that “substantially burdens a religious belief” by “putting substantial pressure on an
26 adherent to modify his behavior and to violate his beliefs.” (See *Catholic Charities*, *supra*, 32
27 Cal.4th at p. 562.) And courts have rejected similar free exercise claims premised on failure to
28 act. (See, e.g., *Groveman v. Regents of Univ. of Cal.* (E.D.Cal. Feb. 4, 2025) No. 2:24-cv-1421,

2025 WL 391312, at *2 [dismissing federal free exercise claim alleging school officials “deprived [plaintiff] of the right to express his Jewish identity” by “allowing” antisemitic protestors because it was “not possible to [conclude] that defendants’ actions (or inactions) had the effect of favoring or disfavoring any religion or burdening plaintiff’s religious exercise”] [alterations adopted]; *Gerwaski v. Nevada* (D.Nev. May 5, 2025) No. 2:24-cv-985, 2025 WL 1311037, at *9 [dismissing claim alleging school official “tolerat[ed]” antisemitic protestors because “a free exercise claim must be based on government action that substantially burdens his religion, not the actions of non-parties”].) Accordingly, Plaintiffs fail to state a free exercise claim.

C. Plaintiffs Fail to Plead the Fourth and Fifth Writ of Mandate Claims

Plaintiffs’ fourth cause of action seeks a writ of mandate to compel Defendants to “perform ministerial acts” by providing equal access to education, eliminating policies that interfere with equal participation by Jewish and Israeli students, and ensuring LEAs comply with legal requirements to provide equal education for Jewish and Israeli students. (FAC, ¶ 174.) Plaintiffs’ fifth cause of action seeks a writ to compel Defendants to “perform ministerial acts” by ensuring schools comply with laws against discriminatory curriculum materials. (*Id.* ¶ 186.)

“To obtain writ relief under Code of Civil Procedure section 1085, a petitioner must demonstrate that the respondent has a clear, present, and ministerial duty that inures to the petitioner’s benefit.” (*High-Speed Rail, supra*, 228 Cal.App.4th at p. 707.) “A writ is not available to enforce abstract rights,” and “is not to be used to control the exercise of discretion, but to ensure that ministerial duties have been fulfilled.” (*Ibid.*)

1. The laws cited do not create mandatory nondiscretionary duties

Plaintiffs rely on Education Code sections 202(f), 33111, and 33112, and the equal protection and free exercise clauses of the California Constitution as the purported source of the duties for their writ claims. (FAC, ¶¶ 163–186.) But these provisions cannot be the predicate of a writ claim because they do not impose any clear mandatory duty on the State or SBE.

Starting with the Education Code, the provisions cited do not create any duty. Section 202, subdivision (f)—titled “legislative findings and declarations regarding accurate and inclusive education”—merely states that the “Superintendent and other state officials and agencies have the

1 authority to enforce federal and state laws” prohibiting discrimination and harassment. (Ed. Code,
2 § 202, subd. (f).) Section 33111 likewise refers only to general authority, explaining merely that
3 the SBE is responsible for adopting “policies” and “general rules and regulations.” (*Id.* § 33111.)
4 And section 33112 does not even *mention* “the State of California” or SBE. (*Id.* § 33112.)

5 These sections do not compel the State of California or SBE to do any particular action, and
6 therefore cannot be the basis for a writ claim. “‘In order to construe a statute as imposing a
7 mandatory duty, the mandatory nature of the duty must be phrased in explicit and
8 forceful language.’” (*Collins, supra*, 41 Cal.App.5th at p. 914; *Citizens for Amending Prop. L v.*
9 *City of Pomona* (2018) 28 Cal.App.5th 1159, 1186 [a duty is ministerial when the action is
10 “unqualifiedly required”].) The statute must “*require*, rather than merely authorize or permit, that
11 a particular action be taken or not taken.” (*Siskiyou Hospital, Inc. v. County of Siskiyou* (2025)
12 109 Cal.App.5th 14, 37 [emphasis in original].) Further, “the enactment allegedly creating the
13 mandatory duty must impose a duty on the specific public entity sought to be held liable.” (*Ibid.*)
14 But sections 202(f) and 33112 do not even identify the State of California or SBE, and section
15 33111 merely outlines SBE’s general role.⁴

16 The equal protection and free exercise clauses of the California Constitution likewise
17 cannot support a writ claim. First, as explained above, the facts alleged do not support any
18 constitutional claim, and therefore “those same facts cannot demonstrate [] defendants had any
19 ministerial or nondiscretionary duty to act” under those provisions. (See *Collins, supra*, 41
20 Cal.App.5th at pp. 915–916 [dismissing writ claim predicated on constitutional provision].)

21 Second, even if those facts stated a claim (and they do not), they would be “insufficient to
22 support the requested writ” because the constitutional provisions at issue provide “no
23 constitutional mandate to the state-level defendants to act in any particular way.” (See *id.* at p.
24 915.) Under the equal protection clause, the “underlying responsibilities” of state actors “are
25 *broadly* to ensure equal protection under the laws with respect to the fundamental right to
26 education.” (*Ibid.* [emphasis added].) “The manner in which the state provides education to its

27 ⁴ Plaintiffs also cite Government Code section 11135’s non-discrimination provision, but
28 that statute is inapplicable. The Legislature intentionally “removed educational claims . . . from
the ambit of Government Code Section 11135.” (*Collins, supra*, 41 Cal.App.5th at p. 905.)

1 citizens is a highly discretionary area and one not broadly amenable to a writ designed to dictate
2 specific conduct.” (*Ibid.*) Similarly, the free exercise clause “is written in terms of what the
3 government cannot do to the individual, not in terms of what the individual can exact from the
4 government.” (See *Jimmy Swaggart Ministries v. State Bd. of Equalization* (1988) 204
5 Cal.App.3d 1269, 1280 [quoting *Lyng v. Northwest Indian Cemetery Protective Assn.* (1988) 485
6 U.S. 439, 451]; see also *Catholic Charities, supra*, 32 Cal.4th at p. 562 [free exercise prohibits
7 government from “burden[ing]” religion].) In other words, whatever constitutional duties relevant
8 to this case that Defendants have, those duties are far from ministerial and nondiscretionary and
9 therefore cannot underly a writ claim. (See *Collins, supra*, 41 Cal.App.5th at pp. 915–916.)

10 **2. Plaintiffs have not alleged an abuse of discretion**

11 Plaintiffs’ cursory, alternative allegation that Defendants’ alleged inaction constitutes an
12 abuse of discretion (FAC, ¶¶ 169, 181) also cannot support a writ claim. As explained above, the
13 State of California and SBE lack authority over the issues raised, and there are no facts plausibly
14 suggesting that Defendants “acted arbitrarily, beyond the bounds of reason or in derogation of”
15 the law. (*Wirth v. State of Cal.* (2006) 142 Cal.App.4th 131, 143.)

16 For these reasons, Plaintiffs fail to state writ of mandate claims.

17 **V. AMENDMENT WOULD BE FUTILE**

18 Plaintiffs cannot satisfy their “burden of establishing amendment would not be futile.”
19 (*Templo, supra*, 24 Cal.App.5th at p. 738.) Amendment cannot make this case appropriate for
20 judicial resolution. (See *Com. for Sound Water & Land Dev. v. City of Seaside* (2022) 79
21 Cal.App.5th 389, 408.) Nor can it cure the fact that the State of California and SBE are not proper
22 parties and have no authority over the alleged violations. (See *Templo*, 24 Cal.App.5th at pp.
23 737–739.) Accordingly, the demurrer should be sustained without leave to amend.

24 **CONCLUSION**

25 For the foregoing reasons, the State of California and State Board of Education respectfully
26 request that their demurrer to the First Amended Complaint be sustained without leave to amend.
27
28

1 Dated: August 21, 2026

Respectfully submitted,

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DECLARATION OF SERVICE BY ELECTRONIC MAIL

Case Name: Brandeis Center, et al. v. State of California, et al.

Case Number: 26STCV06327

Party Represented: State of California & State Board of Education

Declaration of Electronic Service

1. I am at least 18 years of age and not a party to this matter.
2. I am employed in the Office of the Attorney General of the State of California. My business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013-1230, County of Los Angeles.
3. My electronic service address is Jonathan.Fuentes@doj.ca.gov.
4. On August 21, 2026, I electronically served the following document[s]:

**STATE OF CALIFORNIA AND STATE BOARD OF EDUCATION'S
DEMURRER TO THE FIRST AMENDED COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES**

5. I electronically served the aforementioned document[s] by emailing them to the following individual[s]:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct, and that this declaration was executed on August 21, 2026.

Jonathan Fuentes

Declarant

/s/ Jonathan Fuentes

Signature

SA2026301123
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SERVICE LIST

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