

1 JOHN F. DAUM (S.B. # 52313)
2 FRAMROZE M. VIRJEE (S.B. # 120401)
3 DAVID L. HERRON (S.B. # 158881)
4 PETER L. CHOATE (S.B. # 204443)
5 O'MELVENY & MYERS LLP
6 400 South Hope Street
7 Los Angeles, California 90071-2899
8 Telephone: (213) 430-6000
9 Facsimile: (213) 430-6407

10 Attorneys for Defendant
11 State of California

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

ELIEZER WILLIAMS, et al.,

Plaintiffs,

v.

STATE OF CALIFORNIA; et al.,

Defendants.

AND RELATED CLASS-ACTION.

Case No. 312236

Hearing Date: Sept. 17, 2003

Hearing Time: 3:30 p.m.

Department: 10

Hon. Peter J. Busch

DECLARATION OF JOHN B. MOCKLER IN SUPPORT OF THE STATE'S
OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY ADJUDICATION

DECLARATION OF JOHN B. MOCKLER IN SUPPORT OF STATE'S OPPOSITION TO
PLAINTIFFS' MOTION FOR SUMMARY ADJUDICATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, John B. Mockler, declare as follows:

1. I am president of John B. Mockler and Associates a consulting firm specializing in education policy and finance. From fall of 1999 to spring of 2002, I served as Governor Gray Davis' Secretary for Education and Executive Director of the California State Board of Education. In my tenure as Secretary and Executive Director I worked with the Board and school interests to enact the Governor's Standards, Instructional Materials, Professional Development and Accountability system. Working with the Board and the Superintendent of Public Instruction I ensured timely implementation of this highly complex and focused educational reform agenda.

2. Prior to serving the Davis Administration, for more than three decades I have served in both public and private capacities focusing on adequate funding and positive policies for educational achievement. I owned and operated several firms specializing in educational policy and financial management. I served in various senior legislative staff positions with the California Legislature including stints in the California State Senate and with the Assembly Education and Ways and Means Committees and as Senior Advisor to Speaker of the Assembly Willie L. Brown, Jr. From 1974 to 1977 I served on the Senior Executive staff of Superintendent of Public Instruction Wilson Riles. I founded and served for three years as the Director of the Independent Analysis Unit of the Los Angeles City Board of Education having responsibilities over financial and policy

1 reviews of a district serving 600,000 students and budgets in the
2 billions. I have authored and co-authored numerous reports,
3 articles and studies regarding management, policy issues,
4 educational finance and the interplay between the executive,
5 legislative and judicial branches of government. I am a graduate
6 of the University of California at Santa Barbara with a degree in
7 economics and have completed graduate studies in Economics at
8 California State University, Sacramento as well as the Coro
9 Foundation Internship in Public Affairs. A former member of the
10 Board of Directors of the Edmund G. "Pat" Brown Institute of
11 Public Affairs, and a certified Neutral of the Public Employees
12 Relations Board, I currently serve on the boards of Ed Source,
13 Liaison Citizens Program, and the Central Valley Foundation.

14
15 3. Since 1996, the State of California has dedicated
16 massive funds and created a variety of enforcement mechanisms to
17 ensure that all students have up-to-date textbooks and other
18 instructional materials in each subject taught to each student.
19 In fact, from 1996 to 2002 the State has expended approximately
20 \$2.8 billion of categorical funding for textbooks (i.e. money
21 that could only be spent on textbooks and instructional
22 materials).

23
24 4. In 2001-2002 alone, the State channeled \$703
25 million into categorical funding for textbooks and other
26 instructional materials. This is an increase of \$574 million
27 since 1992. See Table A hereto, which provides a summary of
28 instructional materials Categorical funding. Broken down by

1 student, it is an increase of \$85 per student on a per enrolled
2 student basis (from \$25 to \$110 per student). These categorical
3 monies, of course, are in addition to Revenue Limit funding
4 (general funds discussed further in ¶ 6.) which was historically
5 presumed to fund all of grades 9-12 and much of K-8 textbooks and
6 other instructional materials.

7
8 5. The State of California has only had "core
9 academic content standards" since 1998. Textbooks and other
10 instructional materials that are aligned to those content
11 standards were not fully available until January 2002. Given the
12 expanded accountability and massive increases in funding in the
13 last few years, it is quite likely that any real or perceived
14 problems regarding the availability of textbooks and other
15 instructional materials for each student will be resolved in a
16 very short period of time.

17
18 6. School districts receive funding for instructional
19 materials from many sources. The major funding sources for all
20 students are set forth in this declaration. First, each district
21 receives a basic amount of funding per student (on average about
22 \$5,000 per year). This basic funding presumes that school
23 districts will use a portion of these funds to ensure that
24 students have appropriate instructional materials. Indeed, the
25 cost of textbooks and other instructional materials for grades
26 K-12 was used in the initial calculation of Revenue Limits and in
27 establishing funding levels for districts.

28

1 7. In 1972, California created its initial
2 categorical funding stream for K-8 Textbooks and other
3 instructional materials. The initial level was \$7.40 per K-8
4 Average Daily Attendance (ADA). This funding was available for
5 basic and supplemental instructional materials as well as school
6 library collections, testing and staff development. By 2001-02,
7 this \$7.40 had been increased to about \$30 per student.

8
9 8. In 1983, California created the first categorical
10 funding stream for grades 9-12. The initial amount was \$14 per
11 student. Prior to this date it was presumed that district
12 Revenue Limits would cover the costs of all instructional
13 materials for high schools. By 2001-02, this \$14 per student
14 amount had been increased to about \$19 per student.

15
16 9. Recognizing the need to speed up purchases of
17 instructional materials aligned to the State's academic content
18 standards, the State increased funding for standards-aligned
19 textbooks. Specifically, in 1998 the "Schiff-Bustamante
20 Standards-Based Instructional Materials Program
21 ("Schiff-Bustamante Program") allocated an additional \$250
22 million a year for four years to school districts. Districts
23 were specifically restricted from using this money for anything
24 other than the purchase of textbooks aligned with standards-based
25 requirements. This allowed for an additional amount of about \$42
26 per K-12 student. Moreover, to ensure compliance with the
27 Schiff-Bustamante Program, Education Code section 60452 (b)
28 required that school districts receiving these monies provide

1 written assurance (known as "Statements of Assurance") of this
2 conformance to the Superintendent of Public Instruction.
3

4 10. At the same time, the State also added an entirely
5 new source of funding for libraries. The new funding source for
6 school libraries was in the amount of \$26 per K-12 student.
7

8 11. In 1999, a specific grant of \$12 per student was
9 provided annually for K-4 classroom libraries; this grant further
10 added to funding available for textbooks and other instructional
11 materials.
12

13 12. In 2000, the State Lottery Act was amended to
14 require that increased funding allocated to K-12 schools be
15 restricted to providing instructional materials for students in
16 K-12 schools. In 2001-02 this amounted to about \$18 per student.
17

18 13. The State has also modified the funding process so
19 as to shift money towards districts with large numbers of poor
20 and immigrant students. Beginning in 1998, the State began
21 allocating the majority of funding on an "enrolled student"
22 basis. Enrollment-based funding provides funding for each
23 student enrolled in the district regardless of their absence rate
24 or notes from parents. In addition, Lottery-funding uses an
25 allocation method that includes Adult Education, pre-school and
26 child care students. This also tilts funding towards school
27 districts with a high proportion of low income and immigrant
28 students.

1 14. The State's constitutional obligations relating to
2 textbooks are set forth in article IX, section 7.5 of the
3 California Constitution. It provides as follows: "*The State*
4 *Board of Education shall adopt Textbooks for use in grades 1*
5 *through 8 throughout the State, to be furnished without cost as*
6 *provided by statute.*"

7
8 15. Historically, local school districts provided
9 textbooks and other instructional materials to students,
10 consistent with State Frameworks and K-8 instructional materials
11 adoption cycles. Frameworks are reviewed and reissued on a
12 6-year cycle for four core subjects and an 8-year cycle for other
13 subjects. Since 1972 categorical funding has been allocated on
14 an equal amount per student per year. However, school districts
15 spend more money on some subjects (reading), and less on others
16 (foreign languages), and thus expenditure of these funds by
17 districts varies substantially from year to year.

18
19 16. Until 1994 the State had no specific statute
20 requiring local districts to ensure that all students have
21 textbooks and other instructional materials in each subject. In
22 1994 Education Code section 60119 was added to address this
23 issue. Section 60119 requires that each fiscal year the
24 governing boards of each school district provide 10 days notice
25 of a public hearing. During this annual public hearing the board
26 must encourage parents, teachers, members of the community
27 interested in the affairs of the school district, and bargaining
28 unit leaders, and determine, through a resolution, whether each

1 student in each school in the district has, or will have prior to
2 the end of that fiscal year, sufficient textbooks or
3 instructional materials or both in each subject that are
4 consistent with the content and cycles of the curriculum
5 framework adopted by the State Board.

6
7 17. If a negative finding is made (that is, each
8 student does not have such materials), then the board must set
9 forth the reason for the shortfall, establish a remedy and ensure
10 that the remedy is accomplished within a two-year period. To
11 assist in this two-year requirement, districts are specifically
12 allowed to use most funding coming to the district (not just
13 those specifically for textbooks and other instructional
14 materials) to ensure that each student has textbooks and other
15 instructional materials in each subject.

16
17 18. Section 60119 specifically requires local
18 districts to ensure that each student receives the necessary
19 textbooks and instructional materials and advises districts that
20 most funding received can be used for that purpose.

21
22 19. Every year school districts must also provide an
23 audit to the State that was performed by independent accountants.
24 The State Controller's Audit Guide includes information
25 concerning the statutory requirements with which districts must
26 comply. Following this guide, auditors therefore review these
27 requirements to determine whether districts are in compliance.
28 Among other statutory requirements, auditors review whether

1 districts have expended their funds in a manner consistent with
2 State's requirements. In particular, auditors review districts
3 to ensure that they have expended any categorical funds for
4 textbooks in a manner that conforms with the standards-based
5 requirements. The Guide also includes the requirements of
6 section 60119. In this regard, auditors determine whether
7 districts properly noticed their annual public hearing, held that
8 public hearing in a manner that complies with their obligation to
9 encourage members of the community, and made a determination,
10 through resolution, that each pupil has or will have enough
11 textbooks or instructional materials. If the resolution does not
12 state this, the auditor is requested to verify that the Board
13 took action to ensure that students will have sufficient
14 textbooks or instructional materials within a two year period.
15

16 20. Pursuant to the external audit, each school
17 district undergoes a thorough and independent review of its
18 practices. The results of these audits are provided to the
19 State. A negative audit finding can result in the State
20 requiring a district to return instructional materials funds to
21 the State.
22

23 21. The State has enacted additional reforms of
24 instructional materials practices in the last couple years. In
25 the 2002 Legislative Session the Governor proposed and the
26 Legislature passed AB 1781 (Hertzberg et. al., Chapter 802,
27 Statutes of 2002) which established the Instructional Materials
28 Funding Realignment Program ("IMFRP"), Education Code Sections

1 60420 - 60424. This legislation attempts to simplify and
2 rationalize all funding for textbooks and other instructional
3 materials. It changed the current practice of auditing how
4 categorical funds are spent by category to a system that requires
5 all students to actually have core basic instructional materials
6 before a district can use any state categorical funding to
7 purchase any other instructional materials for any students.
8

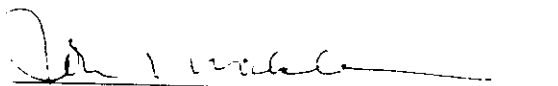
9 22. IMFRP moves four fund sources into a single
10 allocation. It states that local districts must ensure that each
11 student must first have core basic materials adopted by the State
12 Board for grades K-8 and adopted by local boards for grades 9-12.
13 These materials must be aligned to academic content standards and
14 frameworks, where these have been adopted, and must be aligned to
15 frameworks where content standards have not been adopted.
16 Districts must also meet the specifics of Education Code Section
17 60119 (see above) in its use of these funds.
18

19 23. This new law will be enforced through the
20 Controller's audit guide. The Audit Guide's compliance
21 requirements provide that Instructional Materials Funding
22 Realignment Program allowances must be used to ensure that each
23 pupil is provided with a standards-aligned textbook or basic
24 instructional materials. This means that each local school
25 district's independent auditor is required to review the
26 district's current practices and determine whether allowances
27 were used to provide students with aligned textbooks and
28 materials.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury under the laws of
the State of California that the foregoing is true and correct.

Executed this 1 day of August 2003, at Sacramento, California.


John B. Mockler

Instructional Materials Funding from 1992 through 2002

(amounts in millions)

	K-8	9-12	Schiff- Bustamante	K-12 Library	K-4 Classroom	IMRP	One-Time	Prop. 20 Lottery	Total	Enrollment	Per Pupil
1992-93	\$ 104.7	\$ 24.4						\$ 129.1	5,195,777	\$ 24.85	
1993-94	\$ 103.4	\$ 26.1						\$ 129.5	5,267,277	\$ 24.59	
1994-95	\$ 103.5	\$ 26.1						\$ 129.6	5,341,025	\$ 24.27	
1995-96	\$ 105.7	\$ 27.6						\$ 133.3	5,467,224	\$ 24.38	
1996-97	\$ 111.7	\$ 28.2						\$ 139.9	5,162,965	\$ 27.10	
1997-98	\$ 116.2	\$ 29.7						\$ 145.9	5,727,303	\$ 25.47	
1998-99	\$ 133.1	\$ 39.0	\$ 250.0	\$ 158.5				\$ 580.6	5,844,111	\$ 99.35	
1999-00	\$ 125.9	\$ 32.1	\$ 250.0	\$ 158.5	\$ 25.0			\$ 591.5	5,951,612	\$ 99.38	
2000-01	\$ 131.1	\$ 33.8	\$ 250.0	\$ 158.5	\$ 25.0		\$ 37.5	\$ 598.4	6,050,895	\$ 98.89	
2001-02	\$ 137.0	\$ 35.8	\$ 250.0	\$ 158.5	\$ 25.0		\$ 97.0	\$ 703.3	6,147,375	\$ 114.41	