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17 ELIEZER WILLIAMS, etc., *et al.*

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF SAN FRANCISCO

20 ELIEZER WILLIAMS, a minor, by Sweetie  
Williams, his guardian ad litem, *et al.*, each  
21 individually and on behalf of all others similarly  
situated,

22 Plaintiffs,

23 v.

24 STATE OF CALIFORNIA, DELAINE  
EASTIN, State Superintendent of Public  
Instruction, STATE DEPARTMENT OF  
25 EDUCATION, STATE BOARD OF  
EDUCATION,

26 Defendants.  
27  
28

No. 312236

**EXEMPLAR OF UNDISPUTED FACTS  
IN SUPPORT OF PLAINTIFFS' REPLY  
IN SUPPORT OF MOTION FOR  
SUMMARY ADJUDICATION OF THE  
STATE'S DUTY TO ENSURE EQUAL  
ACCESS TO INSTRUCTIONAL  
MATERIALS**

Hearing: September 17, 2003  
Time: 3:30 p.m.  
Department: 20, Hall of Justice  
Judge: Hon. Peter J. Busch  
Date Action Filed: May 17, 2000  
Trial Date: August 30, 2004

1 Plaintiffs submit this exemplar of undisputed facts in response to the State’s Chart of  
 2 Allegations in Support of State’s Opposition to Plaintiffs’ Motion for Summary Adjudication. The  
 3 parties have not disputed the showing, based on Dr. Jeannie Oakes’s conclusions from multiple  
 4 independent sources, that tens of thousands of students statewide suffer critical instructional materials  
 5 shortages. Expert Report of Dr. Jeannie Oakes at 22-24 (Welch Decl. at Exh. H.). Specifically, the  
 6 State and school districts have shown that students in at least 49 schools in 27 districts throughout the  
 7 state have suffered from a lack of sufficient textbooks and instructional materials throughout their  
 8 education. Indeed, the State and school districts disputed only 32 of the 140 allegations set forth in  
 9 the State’s Chart of Allegations. Many of the remaining undisputed facts are listed below.

TRUTH	SUPPORTING EVIDENCE
10 11 12 1. A nontrivial number 13 of students throughout 14 California have 15 suffered from 16 textbook and 17 instructional materials 18 shortages that have 19 acted as barriers to 20 achievement. 21 22 23 24 25 26 27 28	None of the parties can dispute the fact that state-approved external evaluators acting under the State’s Immediate Intervention/Underperforming Schools Program have repeatedly identified a lack of instructional materials as a barrier to student performance. <i>See e.g.</i> , DOE 32733 (May 2001 Fischer Middle School II/USP Action Plan says “[t]he lack of instructional materials has created a hole in the instructional program because in some classes students spend instructional time hand copying definitions out of books so that they can utilize those [definitions] when they go home”); N. Martinez Decl. ¶ 4 (Assistant Superintendent of Alum Rock Union Elementary SD says only that “[t]his is <i>no longer</i> the case” at Fischer); DOE 77551, 77586-77587 (Jan. 2000 Cali Calmecac II/USP Action Plan states “[t]here is clearly a critical lack of textbooks and curricular materials across all grade-levels and subject areas.” “[S]tudents without texts were generally unengaged” and “valuable instructional time was lost...since there were not sufficient texts to bring home”); V. Dale Decl. ¶ 4 (principal confirms that Cali Calmecac held off on purchasing new textbooks and instructional materials at the time); DOE 55605 (April 2000 Frank Sparkes Elementary II/USP Action Plan states there are “[i]nadequate curricular materials to support math, science, spelling instruction”); S. Glenn Decl. ¶¶ 1-2 (Sparkes principal declares, “I do not know if this was true in April 2000. This has not been true...since I have been principal [Fall 2002]”); DOE 65551 (“[o]utdated texts and ad-hoc supplementals” were identified as barriers to student achievement in mathematics the Mar. 2000 II/USP Action Plan for Abraham Lincoln Elementary, San Bernardino City USD); S. Swan Decl. ¶ 3

TRUTH	SUPPORTING EVIDENCE
	(Lincoln principal confirms there was a lack of standards aligned math books at the time and that “students needed more supplemental math materials such as manipulatives”).
<p>2. A nontrivial number of students in California have suffered through classes spanning an entire school year without <i>any</i> textbooks to use in class or take home for homework.</p>	<p>The State and districts confirm that students in at least five schools in four districts have had no textbooks at all in some classes. <i>See e.g.</i>, M. Avalos Decl. ¶ 4 (no textbooks in AP Spanish for 2002-2003 school year at Fremont Senior High in Los Angeles); L. Brunt Decl. ¶ 8 (Fremont principal confirms a lack of Spanish III and AP textbooks during the 2002-2003 school year); J. Garcia Depo. 47:15-48:7, 48:9-23, 50:15-20 (no textbooks in EPH-3 class for 1998-1999 school year at Fremont High School in Oakland) and 57:13-17, 59:1-8, 82:2-11, 107:23-108:7 (no textbooks in ELD classes in 1997-1998 school year and fall 1998 semester); M. Gonzales Depo. 79:9-10, 84:7-14 (son had no books in multiple core courses in 1999-2000 and 2000-2001 school years at Fremont High in Oakland); B. McKibben Depo. 187:15-18 (Fremont principal testifies that his knowledge of textbook shortages extends only back to January 2001 when he became principal (<i>see</i> 11:10-12)); DOE 41593 (finding textbook shortages in mathematics at San Jacinto High School such that some students had not been given a textbook); M. Rohr Decl. ¶ 6 (principal does not dispute the truth of this finding in the May 2001 II/USP Action Plan, but says only that it “[does] not accurately reflect the <i>current</i> availability of textbooks at San Jacinto High School”).</p>
<p>3. A nontrivial number of students in California have had to share textbooks and other instructional materials with one or more other students in class.</p>	<p>The State and districts confirm that students in at least five schools in four districts have had to share textbooks and instructional materials in class due to shortages. <i>See, e.g.</i>, DOE 53585 (Nuffer Elementary Mar. 2000 II/USP Action Plan says “students must share social studies texts in class”); S. Herrera Decl. ¶¶ 5-7 (Nuffer Elementary “made the decision...to purchase fewer than one social studies book per student” as they felt that was sufficient to meet the needs of team teaching, but notes that the school later purchased more books because teachers were frustrated with sharing class sets); Courtiol Decl. ¶ 3 (only 20 French textbooks for all classes at Fremont High in Los Angeles so that “my French III students sometimes have to share the books in class, if they all come to class”); L. Brunt Decl. ¶ 11 (“I am aware that there is presently a shortage of French textbooks at Fremont”); L. Alegre Decl. ¶ 3 (principal of Bryant Elementary School in San Francisco acknowledged a shortage that lasted “about two months” of social studies books in the 1999-2000 school year); J. Garcia Depo. 83:3-24, 84:12-21, 85:13-16 (not enough copies of <i>Sleepy Hollow</i> novel in fall 1998 ELD class at Fremont High in Oakland so that groups</p>

TRUTH	SUPPORTING EVIDENCE
	of two or three students had to share); B. McKibben Depo. 187:15-18 (Fremont principal testifies that his knowledge of textbook shortages extends only back to January 2001 when he became principal ( <i>see</i> 11:10-12)).
<p>4. A nontrivial number of students in California have suffered through classes where adequate numbers of textbooks and other instructional materials were either not available or were not distributed until well into the school year.</p>	<p>The State and districts confirm that students in at least seven schools in three districts have lacked sufficient quantities of textbooks and instructional materials well into the school year. <i>See e.g.</i>, L. Alegre Decl. ¶¶ 3-4 (Bryant Elementary principal acknowledges shortages of social studies books that arrived “within about two months,” and kindergarten ESL books that arrived “several months” after the start of the 1999-2000 school year); DT-LA 8092, 8137, 8141, 8174, 8186 (Crenshaw High School textbook request forms show shortages of <i>Catcher in the Rye</i>, <i>Black Boy</i>, <i>Integrated 2 Math</i>, <i>Paso a Paso</i> and AP Biology books in September 1999); I. Hammond Decl. ¶ 3 (Crenshaw principal acknowledges shortage of all five titles in Sept. 1999 and states, “I believe copies of these books were delivered to students in October 1999, within one month after the book order was placed”); M. Avalos Decl. ¶ 5 (Fremont (LAUSD) student had only a class set of geometry books for most of the 2002-2003 school year); L. Brunt Decl. ¶ 9 (current Fremont principal states that the school received new geometry books in <u>March 2003</u> to remedy prior shortages); Hines Depo. 426:11-429:5 (former Fremont principal testifies that one month into the 2001-2002 school year Fremont still did not have chemistry, reading literacy, and Spanish textbooks); R. Worrall Decl. ¶ 8 (Intervention Team leader for Gompers Middle School confirms that textbooks were not distributed in the first four weeks of the 2001-02 school year); G. Garret Decl. ¶ 11 (Locke Senior High principal states Algebra books were not available for students to take home at the start of the 2002-2003 school year. “Students received their personal copies...in late 2002.”); R. Weikle Decl. ¶ 8 (Intervention Team leader states it was LAUSD policy in 2001 to not issue textbooks until six weeks into the semester due to changing enrollments); H. Foust Decl. ¶ 5 (Richmond High School principal confirms there were only class sets of Algebra books at the start of the 2002-2003 school year. “[S]tarting in January of 2003, students were given their own copies of the Algebra I, Essentials textbooks to use in class and to take home.”)</p>

TRUTH	SUPPORTING EVIDENCE
<p>5. A nontrivial number of students in California have been provided only with class sets of textbooks or otherwise have not been able to take textbooks and other instructional materials home to use for homework.</p>	<p>The State and districts confirm that students in at least 19 schools in 13 districts have not had enough textbooks and instructional materials to take home for homework. <i>See, e.g.</i>, DOE 136989 (Oct. 2001 Scholastic Audit for Horace Mann Middle School found that many students lacked access to a “[c]omplete set of instructional materials” and had “few resources available for students to use for in-home study”); J. Mayer Decl. ¶ 8 (Horace Mann audit team leader confirms that classroom observations found “there were very few educational materials available or being used by students. Classrooms did not have a sufficient number of instructional materials or textbooks for the whole class...”); H. Bauer Decl. ¶ 6 (“When Farmersville Junior High was first selected as an II/USP school...[t]here were [] certain classes that did not have enough textbooks for all students to take home”); Decl. Iris Contreras ¶ 3 (Third grade teacher at Foothill Elementary in Pittsburg declares “[f]our of the six third grade teachers have to share one class set of books for science and ...social studies. Additionally, there are no books for students to take home in either subject”); J. Hahn Decl. ¶ 5 (Foothill principal confirms “there are class sets of social studies and science textbooks for use by third grade students”); G. Garrett Decl. ¶ 4 (Locke High principal confirms “[i]t is true that [Sandy Gonzales’s American Literature] class relied on class sets of [] novels during the past school year”); H. Foust Decl. ¶ 6 (Richmond High School principal confirms there are only enough biology textbooks for students to use in class); C. Clark Decl. ¶ 6 (South Gate HS teacher confirms shortages of <i>The Great Gatsby</i> saying, “[b]ecause that particular novel was in high demand, it was not possible to give each student his or her own personal copy”); R. Erwin Decl. ¶ 3 (Orosi High principal confirms Apr. 2000 II/USP Action Plan finding that “there were approximately one or two classes in which additional textbooks were needed for purposes of allowing students to take books home”); E. Drenner Decl. ¶ 4 (Piute Middle School principal confirms Apr. 2001 II/USP Action Plan finding that “[t]here were [] certain classes that did not have enough textbooks for all students to take home”); T. Unga Decl. ¶ 4 (Vista Verde Middle School principal confirms Feb. 2000 II/USP Action Plan finding saying, “at that time there was a textbook shortage in the sense that there were not enough textbooks to assign...to each and every student...to take home for study”); M. Avalos Decl. ¶ 6 and M. Matheny Decl. ¶ 3 (Fremont LA student and teacher declare there were not enough biology textbooks for students to take home in the 2002-2003 school year); L. Brunt Decl. ¶ 10 (principal says in response, “[w]hen the Biology textbook order arrives in August</p>

TRUTH	SUPPORTING EVIDENCE
	2003, Fremont will have a sufficient number of copies of Biology textbooks in its inventory”).
<p>6. A nontrivial number of students in California have had to use textbooks and instructional materials that were old and outdated.</p>	<p>The State and districts confirm that students in at least eight schools in six districts have had to use old and outdated textbooks and instructional materials in some classes. <i>See, e.g.</i>, DOE 51333 (Jan. 2000 II/USP Action Plan for Roosevelt Elementary in Hanford Elementary School District states “[i]n all focus groups (including students) and in all comments from the classroom observers, the lack of up-to-date books and classroom resources was a chief concern”); C. Hines Decl. ¶ 4 (principal says only that “[t]his statement is not <i>currently</i> accurate about Roosevelt”); DOE 48365 (Apr. 2000 II/USP Action Plan for Helms Middle School lists a “[l]ack of materials, current books and supplies” as a barrier to student achievement. “Students, teachers and parents lament the absence of current and appropriate materials”); DT-WC 7132-33 (January 2001 Helms Teacher Preference Form states that class needs to include “newer math books”); H. MacLean Depo. 53:14-17 (Helms principal, who has been in that position since Summer 2001, speaks only to the currency of textbooks at the time of her deposition in January 2003); DOE 77586-77587 (Jan. 2000 II/USP Action Plan for Cali Calmecac states “[t]eachers in upper grades continue to use outdated textbooks, and sometimes rely on text-based assessments that are unaligned to standards or inappropriate for the given grade level”); V. Dale Decl. ¶ 4 (Cali Calmecac principal confirms that textbooks were “not yet updated” in Jan. 2000); DOE 40254 (May 2001 II/USP Action Plan for Roosevelt Middle School in Compton states “[n]ot all subject area and grade level teachers have adequate, up to date instructional and supplemental materials (i.e. library materials and books, classroom texts and materials, technology and software”); J. Bond Decl. ¶ 4 (Roosevelt principal says only that “[t]his statement is not <i>currently</i> true about Roosevelt”).</p>
<p>7. A nontrivial number of students in California have had to use textbooks and instructional materials that were in poor condition.</p>	<p>The State and districts confirm that students in at least six schools in four districts have had to use textbooks and instructional materials that were in poor condition. <i>See, e.g.</i>, D. Nunez Decl. ¶ 3 (South Gate High School student declares that novels in her English class were “very old and in very poor condition,” as were her Algebra II and health textbooks); C. Clark Decl. ¶ 4 (South Gate English teacher concurs that “[s]ome of the copies of <i>The Scarlet Letter</i> were previously used by students and showed considerable wear”); D. McBride Decl. ¶ 4 (South Gate Algebra II teacher says “[t]hese textbooks were old and some copies...showed considerable wear”); DOE 51432 (Jan. 2000 II/USP Action Plan</p>

1 TRUTH	2 SUPPORTING EVIDENCE
	<p>3 for Richmond Elementary in Hanford Elementary School District  4 states “[s]tudents in the focus groups all noted that their books are  5 in very bad condition....”); J. Nikoghosian Decl. ¶ 10 (Richmond  6 principal (since Aug. 2000) says only that <i>current</i> textbooks are in  7 good condition and acknowledges “it is possible” that some math  8 books used as supplemental materials “are not in good physical  9 condition” and that some science and social science books may  10 only be “in fair condition”); DOE 77586-77587 (Jan. 2000 II/USP  11 Action Plan for Cali Calmecac Charter says “[r]eading and  12 reference materials that were available in [4th through 8th grades]  13 were often in poor condition”); <i>see generally</i> V. Dale Decl.  14 (declaration of Cali Calmecac principal offered by the State in  15 dispute does not address the condition of books and materials at the  16 school).</p>
<p>17 8. A nontrivial number  18 of students in  19 California have had to  20 use textbooks and  21 other instructional  22 materials that were  23 not aligned to state  24 content standards.</p>	<p>25 The State and districts confirm that students in at least 14 schools  26 in 13 districts have been taught with textbooks and instructional  27 materials that were not aligned to the state content standards. <i>See</i>  28 <i>e.g.</i>, DOE 136989 (Oct. 2001 Scholastic Audit for Horace Mann  Middle school shows that students lacked standards-aligned  instructional materials in many language arts and mathematics  classes); J. Mayer Decl. ¶ 8 (Horace Mann audit team leader  confirms that observations found “[c]lassrooms did not have a  sufficient number of instructional materials or textbooks for the  whole class or the materials were not aligned to the state  standards”); G. Bennett Decl. ¶¶ 3-5 (Perris High principal states  he participated in Nov. 4, 1999 meeting where parents expressed  concern that the school did not have proper instructional materials  aligned to state standards, specifically that “the district had not yet  updated its math materials to reflect the State’s recent adoption.”  He notes that new standards aligned math books were purchased  for the 2001-2002 school year -- almost two years later); <i>see also</i>  DOE 58677-58678 (minutes from Perris High public meeting  detailing parent concerns); F. Sifuentes Decl. ¶ 5 (Bunche Middle  School principal does not dispute Spring 2001 CSRD Application  finding that reading and language arts texts were not aligned to  content standards and states, “[i]n my opinion, the current district  adopted reading and language arts textbooks are still not aligned  with state standards” although students <i>now</i> can gain access to the  standards through supplemental materials).</p>

TRUTH	SUPPORTING EVIDENCE
<p>9. A nontrivial number of students in California have attended classes where they lacked adequate supplemental materials to support instruction.</p>	<p>The State and districts confirm that students in at least 23 schools in 16 districts lack or lacked adequate supplemental materials to support instruction. <i>See, e.g.</i>, M. Arellano Decl. ¶ 4 (Margaret Heath Elementary School principal confirms statement in Mar. 2000 II/USP Action Plan saying that, at the time, Heath identified a need for a supplemental writing and grammar program and was “also lacking teaching materials, manipulatives and other supplemental materials to accompany the math textbooks”); S. Tharpe Decl. ¶ 4 (principal declares “[i]n spring of 2000...Yorba Elementary did lack supplemental instructional materials for its students”); A. Barrett Decl. ¶¶ 3-4, 8 (Plummer Elementary School principal confirms finding in 2000-2001 CSRD Application saying there was a need for additional supplemental materials (manipulatives and reference materials) to address logistical difficulties in supplying students and classrooms with these materials during track changes); DOE 48257 (Mar. 2000 Grant Elementary II/USP Action Plan says, “[a]cross grade levels, students and teachers face a lack of appropriate grade-level materials - there is a need for more books for the classrooms and the library, more supplementary materials, more multilingual materials”); J. Lerma Decl. ¶ 6 (current Grant principal confirms II/USP findings and says he has been taking steps to remedy these problems over the past two years); C. Moreno Decl. ¶ 4 (Jurupa Valley High School student declares, “I also lack[ed] supplemental materials and tools for my Spanish II class” in 2002-2003); R. Shecklen Decl. ¶ 4 (Jurupa Valley principal does not dispute a lack of supplemental Spanish II materials for the 2002-2003 school year saying only that “the Spanish Department...has ordered new Spanish II textbooks and accompanying materials” that will be “available for students in the 2003-2004 school year”); M. de la Mora Decl. ¶ 3 (Gates Elementary principal confirms finding of Apr. 2001 II/USP Action Plan saying there were “certain needs of the school existing at that time concerning supplemental materials for literacy and math classes as well as ‘manipulatives’”).</p>

Dated: September 8, 2003



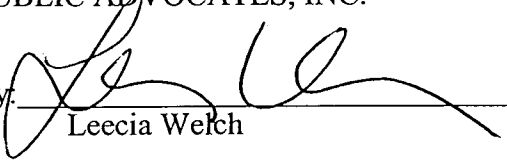
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