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STATE OF CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ELIEZER WILLIAMS, et al., Plaintiff, v. STATE OF CALIFORNIA, et al., Defendant.	Case No. 312236 **EXPERT WITNESS DECLARATION RE DR. CHARLES E. BALLINGER** Date Action Filed: May 17, 2000

I, FRAMROZE M. VIRJEE, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a partner at the law firm of O'Melveny & Myers LLP, counsel of record for Defendant State of California ("State Defendant") in this action.

2. State Defendant has provided a list of persons whose expert opinion testimony the State Defendant intends to offer at trial of this action, either orally or by deposition testimony. The list includes Dr. Charles E. Ballinger, to whom this declaration refers.

3. Dr. Ballinger has agreed to testify at trial.

4. Dr. Ballinger will be sufficiently familiar with

the pending action to submit to a meaningful oral deposition concerning the specific testimony, including any opinions and their bases, that Dr. Ballinger is expected to give at trial.

5. Dr. Ballinger's fee for providing deposition testimony, consulting with State Defendant, conducting research and other activities undertaken in preparation of the attached report is $250 per hour.

6. Pursuant to Section 2034(f)(2)(A) of the California Code of Civil Procedure, attached hereto as Exhibit A and incorporated herein by reference is a *curriculum vitae* providing Dr. Ballinger's professional qualifications.

7. Attached hereto as Exhibit B and incorporated herein by reference is Dr. Ballinger's expert report. Pursuant to Section 2034(f)(2)(B) of the California Code of Civil Procedure, the following is a brief narrative statement of the general substance of the testimony that Dr. Ballinger is expected to give at trial. In his expert report, Dr. Ballinger addresses multi-track year-round education in California and rebuts the opinions expressed in the reports of Dr. Jeannie Oakes and Dr. Ross Mitchell, both designated as experts by plaintiffs in this action, regarding multi-track year-round education. Dr. Ballinger concludes that the academic achievement of students attending multi-track year-round calendar schools is equal to or, in many cases, better than that of students attending comparable traditional/single-track calendar schools. Dr. Ballinger also concludes that multi-track year-round calendar students are afforded educational opportunities equal to those afforded traditional/single-track calendar students. The foregoing

statements are only a general summary of the issues and conclusions discussed and documented more fully in Dr. Ballinger's expert report.

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

Executed at Los Angeles, California, this 17th day of April, 2003.

Framroze M. Virjee

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EDUCATIONAL BACKGROUND

Bachelor of Arts, DePauw University, Greencastle, Indiana – 1957
Master of Arts, The Ohio State University, Columbus, Ohio – 1958
Doctor of Philosophy, The Ohio State University, Columbus, Ohio – 1971

CAREER AND EXPERIENCE

Executive Director (Emeritus), National Association for Year-Round Education -2000-Current

Executive Director, National Association for Year-Round Education, 1980-2000

Director, Coordinator for Year-Round Education, San Diego County Office of Education, 1971-1998

Consultant, Office of Drug Education, Ohio Department of Education, 1970-1971

Coordinator, Computer-Assisted Instruction Project, Franklin County Schools, Ohio, 1967-1970

Assistant Superintendent of Schools, North Canton City Schools, Ohio, 1964-1967

Administrative Intern, Parma City Schools, Ohio, 1963-1964

Instructor, Laboratory School, The Ohio State University, Columbus, Ohio, 1962-1963

Teacher, Princeton City Schools, Ohio, 1960-1962

Teacher, Union Township Schools, Ohio, 1958-1960

PROFESSIONAL PUBLICATIONS

Ballinger, C.E., Kirschenbaum, N., and Poimbeauf, R. *The Year-Round School: Where Learning Never Stops*. Bloomington Indiana: Phi Delta Kappa Education Foundation, 1987.

Ballinger, Charles. "Prisoners No More." *Educational Leadership* 53(3):28-32, 1995.

Ballinger, Charles. "Year-Round Education: It's Time." In *Timepiece: Extending and Enhancing Learning Time*, 30-34. Lorin W. Anderson and Herbert J. Walberg, eds. Reston, VA.: National Association of Secondary School Principals, 1993. (ERIC Document Reproduction Service No. ED 363 946)

Ballinger, Charles. "Unleashing the school calendar." *Thrust for Educational Leadership* 16(4): 16-18, 1987.

Ballinger, Charles. "Year-Round Education: Learning more for less." *Updating School Board Policies* 21(5): 1-5, 1990.

Ballinger, Charles. "Year-round school: When you get rid of the emotionalism—does it make sense?" *Instructor*, August 1988.

Ballinger, Charles. "Rethinking the School Calendar." *Educational Leadership*, 45(5): 57-61, 1988.

Ballinger, Charles. "It's Good for Students, Good for the Community." *USA Today.* Jan. 14, 1986.

Ballinger, Charles. "Year-Round Continuous Education" *Gifted-Children Monthly.* Dec. 1986.

Ballinger, Charles. "The Year-Round Education Issue: How Communities are Adapting." *Camping Magazine.* Sept.–Oct. 1990

Ballinger, Charles. "Chart a New Course: A Report." *San Diego: National Association for Year-Round Education*: 2000.

PROFESSIONAL REPRESENTATION FOR YEAR-ROUND EDUCATION

Presenter on the topic of year-round education at educational conferences, community forums, and school board meetings in 40 of the 50 U.S. states, three Canadian provinces, and Great Britain.

Discussant on topic of year-round education on NBC's *Today*, ABC's *Good Morning, America*, and CBS's *Evening News*, several appearances on CNN talk shows and scores of radio talk shows.

PROFESSIONAL MEMBERSHIPS

American Educational Research Association
Association for Supervision and Curriculum Development
National Association for Year-Round Education
Phi Delta Kappa

Understanding the Value of Multi-Track Year-Round Education

Charles E. Ballinger

Executive Director, Emeritus

National Association for Year-Round Education

I. Assignment.

The State of California, defendant in the case of *Williams, et al. v. State of California, et al.,* has requested that I offer my opinions on the "expert reports" of Dr. Jeannie Oakes and Dr. Ross Mitchell, submitted on behalf of plaintiffs in that case, and that I also offer my opinions generally regarding year-round education, including the multi-track year-round calendar.

II. Professional Experience.

I have devoted my professional career to the field of K-12 education, with the majority of my career devoted specifically to year-round education. I am currently Executive Director, Emeritus, of the National Association for Year-Round Education ("NAYRE"). I served as the Executive Director of NAYRE from 1980 to 2000, and also served as a Director and Coordinator for Year-Round Education at the San Diego County Office of Education from 1971-1998. I have authored numerous professional publications on the subject of year-round education and have served as a speaker on year-round education at numerous educational conferences, community forums and school board meetings in the United States, Canada and Great Britain. I also have appeared on NBC's *Today* show, ABC's *Good Morning, America*, CBS' *Evening News* and CNN, as well as numerous radio talk shows, as a proponent of year-round education. I have also been employed as a teacher and Assistant Superintendent of Schools.

III. Introduction.

Multi-track year-round education provides an academically sound solution to overenrollment in California's public schools. The multi-track year-round calendar not only allows schools to accommodate the growing number of students in California, as well as implement class size reduction policies, but also reduces the learning loss – particularly for disadvantaged students – associated with the long summer vacation of the traditional school calendar. In contrast to the opinions expressed by Drs. Oakes and Mitchell in their reports, the multi-track year-round calendar (including the Concept 6 and Modified Concept 6 calendars) does not cause lower academic achievement and does not result in unequal educational opportunities. In fact, research evidences that the academic achievement of students attending multi-track year-round schools is on par with or, in many cases, better than that of students attending comparable traditional calendar schools. Thus, multi-track year-round education helps alleviate the problem of overenrollment, while at the same time offering educational benefits.

IV. California's Public Schools: Goals And Objectives Relating To Overenrollment.

In their efforts to portray multi-track year-round education as unequal or substandard, it is significant that Drs. Oakes and Mitchell have lodged only complaints about the multi-track year-round calendar and offered no solutions to overenrollment – all from the comfort of their ivory towers. In the real world, the demographics of disadvantaged neighborhoods, limited availability of land suitable for educating school children, class size reduction policies, remnants of Proposition 13 and the current crippling financial climate in the State of California, among other things, have all

contributed to overenrollment in public schools – a problem at least partially alleviated by the multi-track year-round calendar.

Despite the implementation of the multi-track year-round calendar, however, overenrollment persists as more and more students enroll in California's public schools and as class size reduction policies have been implemented. Change, though, is coming. In November 2002, California's voters passed a statewide bond of over $11 billion for new school construction and building modernization. Of course, acquiring new land, complying with stringent environmental standards established for land housing school children, drawing up architectural plans and actually building new schools will take time. Until then, multi-track year-round education remains an academically sound solution to overenrollment.

Drs. Oakes and Mitchell particularly criticize the Concept 6 and the Modified Concept 6 calendars.[1] These calendars, however, are less likely to be used in the near future. In fact, two of the only four California school districts currently operating Concept 6 calendars have announced plans to discontinue the Concept 6 calendar – as well as any multi-track year-round calendar – for the 2003-2004 academic year. A third district has plans to discontinue the Concept 6 calendar in its middle schools and high schools for the 2003-2004 academic year, with the exception of a single middle school, and a fourth district has plans to curtail Concept 6 where feasible, with the goal of discontinuing the Concept 6 calendar altogether within the next several years. Thus, Drs. Oakes' and Mitchell's concerns regarding multi-track year-round education,

[1] In her expert report, Dr. Oakes claims that plaintiffs requested that she offer her opinions specifically regarding the prevalence of Concept 6 schools in California, and the effects, if any, of resorting to the multi-track year-round calendar. (Oakes, p. 2.) Thus, her report focuses on Concept 6 schools, although Dr. Oakes does cite to documents commenting generally on the multi-track year-round calendar.

particularly the Concept 6 calendar, however unfounded, are becoming increasingly moot as goals to alleviate overenrollment in California's public schools are realized.

V. Background And Common Understandings Of Year-Round Education.

Year-round education restructures the school calendar known as the "traditional" calendar.[2] The purpose of the reform is to shorten the summer vacation of the traditional calendar in order to reduce the summer learning loss that pervades the long three-month break. Accordingly, year-round calendars usually offer the same number of required instructional days (or their equivalent hours or minutes), and the same number of vacation days (or their equivalent hours or minutes) as the traditional calendar.[3]

The most prevalent forms of year-round education currently utilized are single-track and multi-track calendars. A single-track year-round calendar is one in which the entire student body, or whole school district, proceeds on a single, unified schedule. Single-track calendars are adopted, among other reasons, to provide a more balanced and enriched educational program, to reduce the learning loss that occurs over the long summer vacation of the traditional calendar and/or to accommodate the needs of a particular community.

Multi-track year-round education is typically implemented, among other reasons, with the intention to provide additional capacity to house students, maximize the efficient use of resources and/or to solve one or more administrative or logistical problems. Since multi-track year-round calendars provide short vacation periods that reduce learning loss

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[2] The "traditional" calendar generally provides 180-days of instruction commencing in late August or early September and ending in early June, with a three-month summer vacation.

[3] Some states list their minimum annual in-school instructional time as days only; some, as minimum annual hours of instruction; some, as either days or hours. (See http://www.ecs.org/clearinghouse. Data retrieved on February 12, 2003.) California maintains a time flexibility in law. (See California Education Code § 37670; see also http://www.leginfo.ca.gov.)

and advance student achievement, the implementation of the multi-track year-round calendar also serves to enhance school reform efforts.

A common feature of many year-round schools is intersession, the period of time during which students are on scheduled vacations. "Intersession" means, literally, between sessions or between scheduled blocks of time in school, and the term has come to represent the actual classes or programs offered to students when they are in intersession or off-track. During intersession, many year-round schools offer remedial and enrichment classes in an effort to improve overall student achievement. The San Ysidro School District in San Diego County, for example, offers two intersessions in the Spring and Summer emphasizing both remedial and enrichment programs. Throughout the State of California, intersessions are offered at both single-track and multi-track year-round schools. (See also Section VII(E) herein.) Because these classes are offered during off-track (i.e., vacation) time, they function essentially as summer school does for a traditional calendar. The obvious benefit of intersession as compared to summer school, however, is that intersession allows students an opportunity for remedial review and improvement at continuing intervals throughout the academic year, rather that just during a long summer vacation after the end of an academic year.

A. Overenrollment.

Surrounded by fast-growing communities and fueled by class size reduction policies, many school districts in California have faced or will face the problem of overenrollment. Overenrollment occurs when the enrollment of a school substantially surpasses the stated capacity of the school to house students at any one time. Thus, overenrollment does not occur simply as a result of the growth in the number of enrollees,

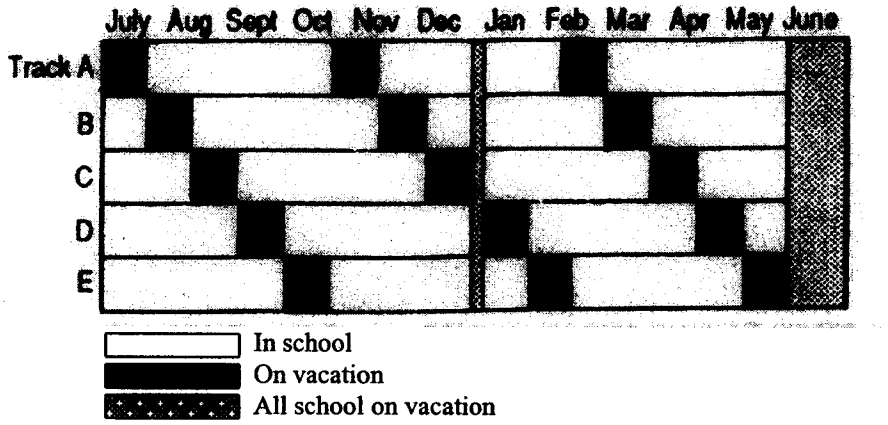
but rather when the number of enrollees outstrips the capacity of a school concurrently to provide a seat for each of its students.

Ordinarily, a school is considered full when capacity is reached, overenrolled or "impacted" when the number of enrollees is 5-20% over the school's stated carrying capacity, and severely overenrolled or impacted when the number of enrollees exceeds 20% over stated capacity. Typically, when faced with the prospect of overenrollment, decision-makers (e.g., elected school board members and high-ranking administrators) begin a process of formulating an acceptable solution to the problem of overenrollment. Multi-track year-round education has proven the most viable and educationally sound solution.

The degree of overenrollment in a district or school dictates which of a number of multi-track year-round calendars can best serve local needs, and the space gained by the choice relates specifically to the number of "tracks" utilized in the calendar. For example, if the degree of overenrollment is less than 25% above the school's capacity, a local district may choose to implement either a four-track or five-track calendar. If overenrollment is 25-40% above stated capacity, however, the five-track calendar will no longer provide an option; rather, only a four-track or three-track calendar will work. A four-track calendar is the most commonly selected option, as it increases the seating capacity of a school 33% above stated capacity in an efficient manner. Once enrollment exceeds 40% above stated capacity, only a three-track calendar will provide a workable schedule to bring attendance on a given day within the capacity of a school. Concept 6 and Modified Concept 6 are the typical three-track calendars adopted to handle high overenrollment.

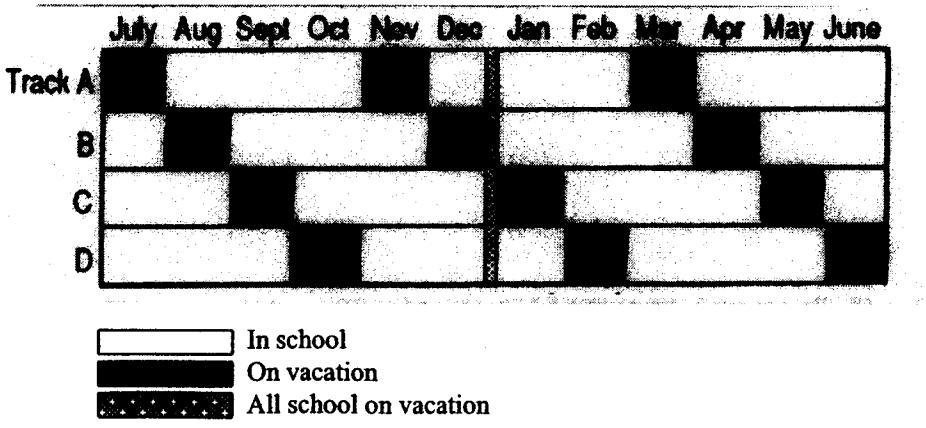
In a five-track calendar school, four tracks of students are in school, while one track is on vacation. (See Figure 1.) This increases the current capacity of a school by 25%, e.g., a school built to house 600 students at any one time can enroll 750 students comfortably on a five-track calendar.

Figure 1. Five-track Calendar



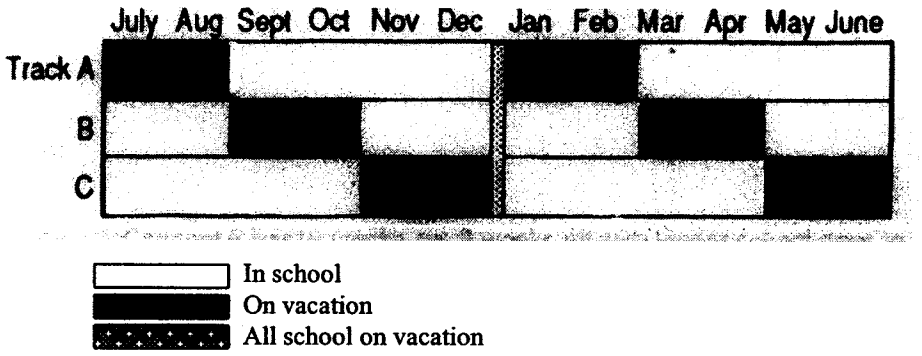
Similarly, on a four-track schedule, three groups of students attend class in school while one group is off-track at any one time. (See Figure 2.) Thus, 25% of the students are on vacation, while 75% of the students are in school. The capacity gained in utilizing a four-track calendar is actually 33%. Thus, a school built to accommodate 600 students at any one time can comfortably enroll 800 students in a four-track configuration.

Figure 2. Four-Track Calendars



Finally, the three-track calendar (such as Concept 6 or Modified Concept 6) is used with exceptionally heavy enrollment.[4] Under a three-track configuration, a school built for 600 students can comfortably enroll 900 students. (See Figure 3.) While one track of students is on vacation, two tracks are in school. Students at Concept 6 and Modified Concept 6 calendar schools attend classes for 163 days, rather than 180, but instructional minutes are added to each school day so that the instructional minutes of Concept 6 and Modified Concept 6 calendar schools equate to 180 days of instruction.

Figure 3. Three-Track Calendar



For school boards and administrators facing the task of safely housing students beyond current capacity, multi-track year-round calendars are a tested solution to overenrollment.

B. The History Of Multi-Track Year-Round Education.

Multi-track year-round education has a long tradition in American education, providing school districts with a considerable base of knowledge from which to judge the implementation of a multi-track year-round calendar, including insight into its successful configurations. Indeed, multi-track year-round calendars have operated continuously in

[4] A Modified Concept 6 calendar provides four one-month vacations, as compared to the Concept 6 calendar that provides two two-month vacations.

the United States for the last 34 years. The first multi-track year-round school in the modern era began in 1969 in St. Charles, Missouri, a suburban community just outside of St. Louis.[5] St. Charles experienced rapid growth during the 1960's with new subdivisions built throughout what had been a semi-rural area. The school adopted a four-track schedule, with 25% of the students on vacation at any one time, and, thus, allowing a 33% growth in enrollment capacity.

Over the next four years, the idea of multi-track year-round education quickly spread – first to Illinois, where a suburban Chicago district adopted the same plan as St. Charles – then to California, Florida, Colorado and beyond. All of these early adoptions of the multi-track year-round calendar occurred in fast-growing suburban communities, where the student population was largely white and middle class. One school district in suburban Denver, Colorado – largely white and middle class – has operated a multi-track year-round calendar continuously for the past 29 years.[6] Parents in this school district long ago realized that the multi-track year-round calendar provides quality education, and support of multi-tracking by the community has continued to this day.[7]

While all early adoptions of the multi-track year-round calendar were variations of the 45/15 four-track calendar initiated in St. Charles, local pressures elsewhere in the United States soon required experimentation with the multi-track year-round calendar in

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[5] Becky-David Elementary School in St. Charles is currently a single-track year-round school. Originally, it operated a multi-track year-round calendar to handle overcrowding, moved to single-track after enrollment abated, returned again to multi-track with new population growth, and once again moved to single-track after growth abated. (See D. Glines and J. Bingle, *National Association for Year-Round Education: A Historical Perspective* (1999).)

[6] Mission Viejo Elementary School in Aurora, Colorado, one of several multi-track year-round schools in the Cherry Creek School District, began its multi-track year-round schedule in the 1974-1975 academic year. (D. K. Goe & C. M. Crowle, *The History of Cherry Creek School District Number Five, 1969-1981*, pp. 571-577.)

[7] In March 1974 a ballot was mailed to all affected households requesting their opinions on the multi-track year-round calendar, resulting in a return of 82% of all ballots. Of that number, 80% of parents voting supported the introduction of the multi-track year-round calendar. (D. K. Goe & C. M. Crowle, *The History of Cherry Creek School District Number Five, 1969-1981*, pp. 571-577.)

order to generate greater enrollment capacity. Thus, calendars of three-tracks, four-tracks and five-tracks, as well as the basic single-track model, were launched. Among the derivatives and variations developed was a three-track calendar known as Concept 6. Concept 6 was first implemented in Jefferson County, Colorado, in a fast-growing suburban community outside of Denver, and was operated in the community for nearly a decade before overenrollment abated.

The first multi-track year-round schools in California began simultaneously in 1971 in the La Mesa-Spring Valley and Chula Vista school districts (both in San Diego County), which were experiencing exceptionally rapid growth at that time. Over the ensuing three decades, hundreds of other California schools have at one time or another operated a multi-track year-round calendar to facilitate the safe housing of students.[8] Throughout its history, the multi-track year-round calendar has proven that it is a sound solution to overenrollment.

VI. The Value Of Differing Educational Experiences.

Throughout their reports, Drs. Oakes and Mitchell claim that multi-track year-round education fosters unequal student opportunities for learning. They also lead the reader to believe that different educational experiences necessarily harm students. They are wrong on both points. The reality is that educational opportunities differ among students for a number of reasons – with many of the differences attributable to factors and experiences wholly unrelated to the educational system and its adopted calendars – and these differing experiences cannot be categorized as necessarily unequal.

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[8] Nine hundred and thirty-one multi-track year-round schools are currently operating in California in the 2002-2003 academic year. (See Year-Round Education Reference Directory, 2002-2003.) Many other schools utilized the multi-track year-round calendar between 1971-2003, but no longer operate the calendar as overenrollment has abated.

Geography, for example, provides different learning opportunities. Thus, a student in Berkeley, California may have a vastly different educational experience than a student in San Diego, California. Teacher exposure also contributes to different learning opportunities. Within the same school and at a particular grade level, teacher A, who has experience living in another country and teaching that country's students, will very likely bring learning experiences and learning opportunities to his/her students quite unlike the experiences and opportunities available to the students of Teacher B, next door, who has not had similar experiences. Clearly, differences in learning experiences and opportunities occur daily, irrespective of the school calendar.

As discussed more fully in Section VII(A)(2) herein, socio-economic status also pervades the educational experience. Learning opportunities for students with parents of limited education and resources may be different from that of other students as a result of their socio-economic status and demographic factors, but not ordinarily as a result of implementing a particular school year calendar.

The point here is that the entire experience called "education" is made up of a series of differing learning experiences and opportunities that are not, for a variety of reasons, necessarily exactly alike. As evidenced throughout this report, the multi-track year-round calendar does not create or foster unequal educational experiences.

VII. The Use Of Multi-Track Year-Round Education, Student Outcomes And School Experiences.

In contrast to the claims of Drs. Oakes and Mitchell, multi-track year-round education does not cause, nor does it result in, unequal educational opportunities or lower academic achievement. As both Drs. Oakes and Mitchell acknowledge, the multi-track year-round calendar was implemented in California in response to the rapid growth of the

State's student population. The multi-track year-round calendar, therefore, is a solution to the problem of overenrollment and not a problem in and of itself. In fact, there is no evidence that the multi-track year-round calendar harms students. Indeed, if anything, the evidence indicates that the multi-track year-round calendar advances academic achievement, particularly for students with low socio-economic backgrounds. Throughout their reports, Drs. Oakes and Mitchell attack the multi-track year-round calendar on a number of grounds, none of which hold up under careful examination.

A. The Multi-Track Year-Round Calendar Advances Positive Academic Achievement.

In their reports, Drs. Oakes and Mitchell imply that there is a causal relationship between the multi-track year-round calendar and low academic achievement. In fact, the evidence shows that the multi-track year-round calendar does not cause, or result in, low academic achievement.

1. The Multi-Track Year-Round Calendar Reduces Learning Loss.

One of the chief purposes of introducing a year-round calendar (single- or multi-track) is to stem the learning loss that occurs over the long summer vacation of the traditional calendar – a reform bolstered by considerable research. A major study at the University of Missouri, recognized as the most comprehensive study of its kind to date in the area of summer learning loss, confirmed what classroom teachers have instinctively known for decades – there is substantial learning loss over the three-month summer vacation of the traditional calendar. (H. Cooper, B. Nye, K. Charlton, J. Lindsay & S. Greathouse, *The Effects of Summer Vacation on Achievement Test Scores: A Narrative and Meta-Analytic Review* (1996).) Among the findings of the study are that: (1) during the summer break all students lose math computational skills, (2) disadvantaged students

also lose reading skills over the summer, (3) summer vacation increases the disparities between middle-class and disadvantaged students' reading scores, and (4) the detrimental effect of the traditional calendar's summer vacation on student achievement appears to increase as grade levels increase. (Id.)[9]

It is evident from these studies that the traditional calendar school year is not necessarily conducive to student learning due to its long summer vacation, and that diminishing the length of any vacation period facilitates reductions in learning loss. These studies further demonstrate that the traditional calendar is disadvantageous for low socio-economic students – who are the students least likely to be able to afford structured learning experiences over the long summer vacation. Instead, year-round education – with its shorter intersession periods – provides a powerful strategy for stopping learning loss.[10] Significantly, in their reports, Dr. Mitchell completely ignores the research regarding summer learning loss and Dr. Oakes gives it only minimal attention.

Teachers have known for decades about the summer learning loss that occurs on the traditional calendar. In my experience, it is generally this loss that requires teachers in traditional calendar classrooms to spend four to eight weeks (20-40 school days) each Fall reviewing and re-presenting material covered in previous grades. In sharp contrast, I have found that teachers in year-round schools typically report that review days total one to three weeks (5-15 school days) annually – considerably fewer days than their traditional calendar counterparts. Fewer days of review results in more days for additional

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[9] The findings of the University of Missouri study correspond to the findings of other researchers. (See D.R. Entwistle & K.L. Alexander, *Summer Setback: Race, Poverty, School Composition, and Mathematics Achievement in the First Two Years of School* (1992); S.H. Pelavin & J.L. David, *Evaluating Long-Term Achievement: An Analysis of Longitudinal Data from Compensatory Education Program* (1977); R.M. Allinder, L.S. Fuchs, D. Fuchs & C.L. Hamlett, *Effects of Summer Break on Math and Spelling Performance as a Function of Grade Level* (1992).)

[10] For example, the intersession breaks of the Concept 6 calendar are 33% less in length than the traditional calendar's summer vacation.

instruction. Now that educational researchers have confirmed what experienced teachers have known for decades, teachers increasingly endorse the year-round school year. (J. McLean and R. Adams, *An Evaluation of the Transition to Year-Round School of the University School* (July 2001); N. Brekke, *What Year-Round Education Can Do To Enhance Academic Achievement and to Enrich the Lives of Students that the Traditional Calendar Cannot Do* (1995); A.L. Cecchetti, *The Impact of Concept 6 Year-Round Education Schedules on Math Scores and Selected Attitude Indicators,* 1988-1993 (1995); L.M. Alcott-Lutz, *The Perceptions of Administrators and Teachers Regarding Student Achievement and Motivation in Catholic Elementary Schools with Year-Round Education* (2002); A. Resnik, *Year-Round Schools Evaluation* (1993).)[11]

Like teachers, parents also recognize the inherent learning loss that results from the long summer vacation of the traditional calendar. Indeed, parents respond to learning loss by enrolling their children in structured learning experiences, such as summer school. For disadvantaged students, however, I have found that participation in structured learning experiences over an extended summer vacation is relatively low. It is the disadvantaged student, therefore, that benefits most from the shorter intersessions of the year-round calendar, including multi-track.

2. Socio-Economic Status Provides The Primary Indicator Of Student Achievement.

Significantly, socio-economic status is the primary indicator of student achievement. Indeed, in an earlier report co-authored by Dr. Mitchell, he concluded that, "[A]s would be expected, student ethnicity and family income are very powerful predictors of student achievement." (R.E. Mitchell and D.E. Mitchell, *Year-Round*

[11] The Resnik study has been cited by plaintiffs' experts as critical of year-round education. Yet, the Resnik study indicates that the majority of teachers in the study preferred the year-round calendar.

Education: Student Segregation and Achievement Tracking in Year-Round Schools, (1999), p. 14.) Drs. Mitchell also found that multi-track year-round schools exhibit lower student achievement and a "more challenging student population" than traditional calendar schools, but that "most of these differences are due, no doubt, to family housing patterns." (Id.) According to Drs. Mitchell, the "family housing patterns" that prompt the need for multi-track year-round schools are the greater population densities in poor neighborhoods. (Id.) Specifically, Drs. Mitchell noted that, "while year-round track assignment segregates students by achievement levels, other factors influencing student achievement *may actually be responsible* for measured inter-track differences, such as socio-economic status (SES), English language proficiency, prior achievement, attendance regularity, among others, and lead to unequal track performance." (Id. (emphasis added).) As Dr. Mitchell admits, socio-economic status is a powerful force in terms of academic achievement.

In her report, Dr. Oakes, too, cites to several studies that find socio-economic status to be a key indicator of student achievement. For example, Dr. Oakes cites in her report to a study in the Oakland Unified School District for the proposition that, "[A]lthough socio-economic status played some part in the results, the type of school calendar played a significant role." (Oakes, p. 35.) The Oakland study cited by Dr. Oakes, however, recognizes a much stronger link between socio-economic status and academic achievement than Dr. Oakes admits, finding, "[I]n summary, we found that...academic achievement is *chiefly influenced by socio-economic status*, with the calendar modality (year-round or regular), playing a secondary but still significant role." (A. Resnik, *Year-Round Schools Evaluation* (1993), p. 8 (emphasis added).)

That same Oakland study goes on to conclude that, "[B]ecause the population at year-round schools differs from the population at the other Chapter I [traditional calendar] schools it is difficult to establish whether the lower achievement levels at Year-Round are due to differences in the population or are due to the different calendar. Our results indicate that both factors play a role in academic achievement, with low SES being *more detrimental* than the calendar." (Id. (emphasis added).) The Oakland study, therefore, cannot be viewed as a well-documented, weighty report on the effects of year-round education on student achievement. Instead, what the Oakland report tells us is that socio-economic status, first and foremost, is central to student achievement.

Similarly, in a 2001 report cited by Dr. Oakes regarding multi-track year-round schools in the Los Angeles Unified School District ("LAUSD"), authors Jeffrey A. White and Steven M. Cantrell stated, "[W]e have found evidence of an interaction effect between student background characteristics at the school level and student performance. *We cannot condemn a calendar policy for factors beyond the control of that policy, namely student background characteristics.*" (J.A. White, M.A., and S.M. Cantrell, Ph.D., *Comparison of Student Outcomes in Multi-Track Year-Round and Single-Track Traditional School Calendars* (March 21, 2001), p. 7 (emphasis added).) Significantly, Dr. Oakes does not cite to White and Cantrell's 2002 report, which expanded on the 2001 report. In the 2002 report, White and Cantrell conclude that most of the differences in student achievement in multi-track year-round schools can be explained by school demographics, and that student performance in multi-track year-round schools is comparable to traditional calendar schools with similar demographics. (J.A. White, M.A., and S.M. Cantrell, Ph.D., *Comparison of Student Achievement and Teacher and*

Student Characteristics in Multi-Track Year-Round and Single-Track Traditional School Calendars: Update 2000 to 2001 (July 2002), p. v.)

Dr. Oakes also points to a 1987 California Department of Education study (the "Quinlan Study") for the proposition that multi-track year-round schools scored below predicted levels even after controlling for socio-economic status. (Oakes, p. 35.) Once again, Dr. Oakes' reference is inapplicable. Significantly, the Quinlan Study acknowledged that, although background characteristics were controlled in the study, there are differences between single-track and multi-track year-round schools. (C. Quinlan, C. George and T. Emmett, *Year-Round Education: Year-Round Opportunities* (1987), p. 94.) These differences were attributable to the fact that many multi-track year-round schools serve communities with low socio-economic status and high percentages of limited English speakers. (Id.) Furthermore, the Quinlan Study expressly concluded that the fact that many year-round schools were not achieving at predicted levels is "most likely due to factors that are unrelated to the year-round calendar but may be related to special problems of communities experiencing rapid growth." (Id. at 95.) Thus, the Quinlan Study reveals that predicted levels of achievement are related more to demographics than to the multi-track year-round calendar.

Two additional studies cited in Dr. Oakes' report also underscore the significant effect of socio-economic status on student achievement, with one study finding an impressive association between the educational background of a student's mother and academic achievement. (See A. Henderson and N. Berla, *A New Generation of Evidence: The Family Is Critical to Student Achievement* (1994); D.P. Baker and D.L. Stevenson, *Mothers' Strategies for Children's School Achievement: Managing the Transition to*

High School (1986).) There simply is no doubt that socio-economic status plays the primary role in academic achievement.

3. The Academic Achievement Of Students Attending Multi-Track Year-Round Calendar Schools Compares Favorably To That Of The Achievement Of Students At Traditional Calendar Schools.

Charged with a clear agenda to attack year-round school calendars as bad for students and inherently unequal to traditional calendar programs, in their reports, Drs. Oakes and Mitchell each attempt to paint a bleak picture of multi-track year-round schools in terms of academic achievement. In fact, however, the evidence indicates that achievement of multi-track year-round schools is comparable to traditional calendar schools with similar demographics and that there are significant gains in academic achievement for low socio-economic status students. Significantly, Drs. Oakes and Mitchell do not – and cannot – evidence a causal relationship between the multi-track year-round calendar and low academic achievement.

Dr. Carolyn Kneese, who has completed a number of studies on year-round education and is widely considered the nation's foremost authority on achievement results in year-round schools, has concluded that, "[A]s for excellence, albeit a small effect, there is evidence of recent improved student performance on the multi-track year-round calendar, particularly for the disadvantaged. Scores may be initially lower, given the student type typically enrolled in the multi-track program, but in most instances the reported *gains by calendar* appear to be consistent over time." (C.C. Kneese, *The Multi-Track Calendar: A Multi-Site Evaluation* (2003), p. 29.) Dr. Kneese goes on to state that "[I]mproved gain scores on the year-round calendar may be due to the fact that research demonstrates learning loss on the traditional calendar." (Id. at p. 30.)

In fact, Dr. Kneese found that the Quinlan Study, for which Dr. Oakes reported negative findings, evidences gains in multi-track year-round student achievement. Specifically, Dr. Kneese notes that the Quinlan Study indicates that, while single-track year-round scores remained about the same from 1983 to 1985, students on the multi-track year-round calendar were experiencing gains in scores over the same time period, thereby demonstrating a potential for "closing the gap." (Id. at 12-14.) Indeed, the Quinlan Study specifically states that the strong performance of non-urban multi-track year-round schools lends support to the year-round calendar as an educational option. (C. Quinlan, C. George and T. Emmett, *Year-Round Education: Year-Round Opportunities* (1987), p. 95.)

Dr. Kneese further finds that "[O]ne must recognize the importance of reporting not just cross-sectional results but to additionally attempt to report longitudinal results in order to fully understand academic performance." (Id. at p. 14.) Longitudinal results evidence important trends in academic achievement, such as improved scores. While the Quinlan Study reports a concern about multi-track year-round academic performance, the researchers do not demonstrate that the multi-track year-round calendar caused a lower academic ranking. Nor do the researchers recognize the longitudinal gain in performance by the multi-track year-round students, gains large enough to close an achievement gap over a period of a few years. Dr. Kneese has analyzed longitudinal results for multi-track year-round students and concludes that "...the results demonstrated thus far are promising for the multi-track year-round program as an appropriate choice for a public school system faced with difficult realities and increasingly limited resources." (Id. at p. 35.)

Dr. Kneese, likewise, finds that multi-track year-round education does not *cause* low achievement. Specifically, Dr. Kneese states that "[P]lacement in a multi-track year-

round school program does not *cause* lower student performance. Average academic background, level of support/expectation, parental efficacy, and community environment are likely differential attributes that exist for these students and such that cannot be controlled by the educational system. Furthermore, it may be that the multi-track program remedies the very deficiencies which exist for the disadvantaged student on the traditional calendar configuration." (Id. at p. 33.) According to Dr. Kneese, the academic performance of students on the multi-track year-round calendar demonstrates continued improvement.

In her attempt to portray student achievement results at Concept 6 schools as poor, Dr. Oakes cites in her report to a limited number of studies, all of which actually evidence that multi-track year-round students achieve in a manner comparable in terms of performance to their traditional calendar counterparts and/or that socio-economic status, and not calendar model, best predicts student achievement.[12]

Importantly, Dr. Oakes also failed to cite to White and Cantrell's 2002 report, which found that in documenting the comparability of student achievement in multi-track year-round schools and other school calendars with students from the same socio-economic status and demographics in LAUSD, differences between the school calendars were equalized to within ½ normal curve equivalent points. (J.A. White, M.A., and S.M. Cantrell, Ph.D., *Comparison of Student Achievement and Teacher and Student Characteristics in Multi-Track Year-Round and Single-Track Traditional School Calendars: Update 2000 to 2001* (July 2002), p. 4.) In other words, achievement scores

[12] As previously noted, the Oakland study and the two White and Cantrell LAUSD reports concluded that socio-economic status and community demographics were the most powerful predictors of student achievement, outranking the calendar in importance, and were not, as Dr. Oakes alleges, reports simply evidencing academic results. Also, as noted, Dr. Kneese, reassessing the Quinlan Study, found significant achievement gains among multi-track year-round students. (See also Section VII(A)(2) herein.)

for multi-track year-round students are essentially comparable to those of students attending a traditional calendar school with similar background characteristics. White and Cantrell also found that as of Spring 2001, elementary students in multi-track year-round schools performed *equally well or better* than their single-track peers in reading and math. (Id.) Additionally, White and Cantrell found that in comparing demographically similar schools, three-track (Concept 6 or Modified Concept 6) schools outperformed their peers on single-track calendars by .8 points. (Id.) Thus, multi-track year-round students perform as well or better than students in traditional schools with comparable demographics.

Dr. Mitchell's analysis of the academic achievement of multi-track year-round schools similarly fails. Dr. Mitchell attempts to evidence a causal relationship between the multi-track year-round calendar and low academic achievement by simply pointing to the rankings of the Academic Performance Index in 2001 - a snapshot in time that tells us only what is and nothing about a causal relationship. In his report, Dr. Mitchell developed box plots demonstrating descriptive and contextual differences in the categories of Concept 6 schools, multi-track (non-Concept 6) schools and traditional/single-track schools. (Mitchell, pp.1-14.) Absent from these figures, however, is any analysis of factors such as the population growth in the communities utilizing Concept 6, the numbers of students from single parent families attending the comparison schools, and the socio-economic status of the families in the comparison schools.

Importantly, Dr. Mitchell does concede that after applying the School Characteristics Index ("SCI"), which controls for such things as socio-economic status and is the basis for establishing similarities for the Similar Schools Rank, there appears to be *little difference in achievement* among the various calendar types. (Mitchell, p. 20

(emphasis added).) Thus, multi-track year-round students are performing at levels comparable to students of traditional calendar schools with similar background characteristics. Dr. Mitchell tempers his conclusion, though, by claiming that there is a bias in the calculation of the SCI, and that achievement impacts of the multi-track year-round calendar are assigned a "negative weight." (Id. at pp. 20-21.) Dr. Mitchell claims that this so-called "negative weight" means that students in a multi-track year-round school are predicted to achieve at a lower level than traditional calendar schools. (Id.) Dr. Mitchell further claims that as a result of this negative weight, multi-track year-round schools are compared with lower performing traditional schools, making multi-track year-round schools appear comparable. (Id. at p. 21.) Dr. Mitchell's claims are considerably off-base.[13]

Significantly, Dr. Mitchell admits that he has no knowledge as to why multi-track year-round education is included as an indicator in the SCI and does not believe he ever sought out an explanation for its inclusion. (Mitchell Dep. at pp. 162-165.) Thus, Dr. Mitchell's allegations are nothing more than mere conjecture. In fact, the multi-track year-round school indicator contained in the SCI is of negligible weight. Moreover, the Technical Design Group, the group that designed the SCI, made it very clear that the background characteristics of the SCI are *not* predictors of achievement levels or anything else, and that the similar schools rank should *not* be considered as setting different expectations for different schools. (Technical Design Group of the Advisory Committee for the Public Schools Accountability Act of 1999, *Construction of California's 1999 School Characteristics Index and Similar Schools Ranks* (April 2000), p. 15.) The so-

[13] In her deposition, Dr. Oakes made the same argument. (Oakes Dep. at pp. 537-38.)

called "negative weight" to which Drs. Mitchell and Oakes refer is so negligible in reality that it might as well not exist.

In contrast to Drs. Oakes and Mitchell's allegations, the evidence indicates that multi-track year-round schools perform at the same achievement level as comparable traditional calendar schools. Indeed, there simply is no evidence that shows that the multi-track year-round calendar disadvantages student achievement.

B. Multi-Track Year-Round Schools Create Smaller, Individual Schools.

Dr. Oakes claims that multi-track year-round schools are large and overcrowded in terms of total student population and classroom size. School population size, however, is not a symptom unique to the multi-track year-round calendar. In comparing the traditional and multi-track year-round calendars with respect to size, it is evident that large schools exist in California regardless of calendar type. For example, there are 395 elementary schools in the State with over 1000 students in enrollment, 196 high schools in the State with over 2500 students in enrollment, and 37 high schools in the State with over 3500 in enrollment, with both traditional and multi-track calendars utilized in those schools. (See http://data1.cde.ca.gov/dataquest/content.asp.) Indeed, when the multi-track year-round calendar is utilized, it actually helps to alleviate pressures related to school size.

Moreover, while it is true that multi-track year-round schools are large in terms of *total* student population, the multi-track year-round calendar, by definition, reduces the student population on campus at any given time and reduces the feeling of mega-size. As Dr. Oakes admits, the individual tracks are essentially smaller schools within a larger school. (Oakes, p. 28.) Thus, each track is smaller than many of the schools operating traditional calendars.

Moreover, in terms of student class size, Dr. Oakes has presented no evidence showing that class size in multi-track year-round schools is larger than found in traditional schools comparable in enrollment, and, indeed, no such evidence exists.

Significantly, Dr. Oakes' criticism of large schools is inconsistent with her call for greater course variation.[14] Small high schools cannot possibly offer all of the course variations that Dr. Oakes finds crucial to academic opportunity. Simply put, Dr. Oakes cannot have both smaller schools and course variation typical of larger schools. (See also Section VII(D) herein.)

C. Loss Of Instructional Time Is Curtailed At Multi-Track Year-Round Schools.

In her report, Dr. Oakes attempts to portray a causal connection between the Concept 6 calendar and what she alleges as lost instructional time. (Oakes, pp. 20-24.) No such causal connection exists. In fact, the lost instructional time Dr. Oakes disparages occurs in both traditional calendar and Concept 6 schools and is a function of administration, and not the result of the operational calendar of a school. Specifically, the functions cited by Dr. Oakes - among them, re-establishing discipline and rapport with students, reviewing subject matter covered before a long break, preparing classrooms and distributing and collecting textbooks - occur in any school operating any calendar type. In fact, in my experience, I have found that teachers in multi-track year-round schools

[14] In her report, Dr. Oakes cites to a study that recommends a range of 400 to 800 students for high schools, and elementary schools in the 300-400 student range. (Oakes, p. 19.) In her deposition, though, Dr. Oakes admitted that the operation of schools in these student ranges is too restrictive to impose as a mandate. (Oakes Dep. at 483.) In fact, housing this number of students would require building at least 1000 new high schools and 2400 new elementary schools in California – a short-term fiscal and physical impossibility. See California Department of Education ("CDE") website listing for 2001-2002. There are 966 high schools in the State enrolling 1,602,306 students. 1,602,306 (high school students) ÷ 800 (maximum ideal of Dr. Oakes' high school enrollment) = 2003 high schools. Since there are currently 966 high schools, an additional 1037 high schools would be required. Similarly, per the CDE, in 2001-02 there were 5426 schools enrolling 3,162,730 elementary students. 3,162,730 (elementary students) ÷ 400 (maximum ideal of Dr. Oakes' elementary school enrollment) = 7907 elementary schools. Since there are currently 5426 elementary schools, an additional 2,481 elementary schools would be required.

generally spend less time on these functions, as the shorter intersession breaks of the Concept 6 calendar require less subject matter review and Concept 6 teachers generally have administrative functions (such as moving classrooms and distributing text books) down to a science. As previously noted in Section VII(A)(1) herein, multi-track year-round teachers typically spend significantly less time annually on curriculum review and administration. Furthermore, as discussed in Section VII(A)(3) herein, there is no evidence that students in Concept 6 schools suffer academically as a result of the Concept 6 calendar, meaning that any alleged loss of instructional time has no adverse impact on students.

Significantly, fewer instructional days do not result in less instruction or lower achievement. The number of instructional days, by itself, has little or no effect on the overall achievement of students. Indeed, researchers have found that there is little or no relationship between allocated time and student achievement. (J. Aronson, J. Zimmerman and L. Carlos, *Improving Student Achievement by Extending School: Is It Just a Matter of Time?* (1998), p. 3.) This is readily evident in Minnesota, where there is no legally-defined school year. In fact, Minnesota operates school districts with the shortest school year of any of the 50 states. Significantly, though, Minnesota usually

ranks near the top of the states in overall student achievement results.[15] A common Minnesota school year of 170 instructional days is just over one week longer than the Concept 6 school year in California, not enough to make much of a difference, if any. On the other hand, Hawaii, with an instructional year of 184 days, has the longest school year of the 50 states, yet it does not rank near the top of states in terms of student achievement.[16]

Dr. Oakes also claims that the Concept 6 calendar results in truncated instructional time. Her report in this regard is misleading. By adding instructional minutes each day, Concept 6 schools provide the same number of instructional minutes as do traditional calendar schools. Dr. Oakes attempts to portray the daily addition of instructional minutes in Concept 6 schools, though, as substandard, claiming that the additional instructional minutes may not "necessarily" be used to provide students with

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[15] There are several indicators of Minnesota's high standing among the states. For example, the following is a list of ACT average composite scores (2001):

ACT	State	Composite Score	% of Graduates Tested
1.	Oregon	22.6	11
2.	Washington	22.4	17
3.	New Hampshire	22.3	7
4.	New York	22.2	14
5.	Vermont	22.2	9
6.	Wisconsin	22.2	68
7.	Minnesota	22.1	66
8.	Iowa	22.0	67
9.	Massachusetts	21.9	8
National Average		21.0	38

(See www.act.org/news/data/01/states.html. Data retrieved on February 24, 2003.)

See also National Assessment of Educational Progress (NAEP) on science testing results: "At grade 8 the top 9 states and other jurisdictions in 2000 were Idaho, Maine, Massachusetts, Minnesota, Montana, North Dakota, Ohio, Vermont and the Department of Defense domestic and overseas schools.... Massachusetts, Minnesota, Montana, and Ohio all had percentages of eighth graders at or above *proficient* that were higher than the percentages in other participating states...." See http://nces.ed.gov.

A third indicator is that, "[I]n 2000, no state scored higher than these nine in math: Connecticut, Indiana, Iowa, Kansas, Massachusetts, Minnesota, North Carolina, Texas and Vermont." (See www.ecs.org/clearinghouse/28/24/2824.htm.)

[16] See www.ecs.org/clearinghouse (data retrieved on February 12, 2003). See also "School Performance and Improvement in Hawaii 2001," pp. 27-30 (http://arch.k12.hi.us/school/ssir/default.html).

additional content. (Oakes, p. 20.) Dr. Oakes' line of thinking assumes that all teachers approach teaching in the exact same manner. This is not the case. In fact, adding time – days, hours, or minutes – to the school year, a position apparently endorsed by Dr. Oakes, may not necessarily provide students with additional content, irrespective of any calendar. (Oakes, p. 25.) Teachers in all calendar schools approach instruction, including the use of instructional minutes, differently.

Furthermore, Dr. Oakes simply provides no concrete evidence that most teachers do not, in fact, teach additional academic content during the extended daily instructional minutes in Concept 6 schools.[17]

Dr. Oakes also did not apparently question whether the additional instructional minutes are utilized to cover a subject matter in more depth, allowing students to better master material. In fact, there is great debate in educational circles regarding the academic value of covering less material in more depth versus covering more material in less depth. Dr. Oakes, however, avoids this debate.

Dr. Oakes further attempts to disparage Concept 6 by alleging that fewer tests are administered and less homework is assigned on the Concept 6 calendar. (Oakes, p. 21.) Again, however, there is no evidence to support this theory, and no evidence that homework is assigned every day on a traditional calendar or that more tests are administered on that calendar. Homework and tests are generally administered at the

[17] Indeed, time specialists could argue that teachers in Concept 6 schools are actually afforded more overall instructional minutes each academic year than their counterparts in 180-day calendar schools because of lost instructional time as students settle in to begin the school day, after recess or class period changes, after lunch and after physical education classes. This instructional time is lost every day of the school year. With fewer school days on the Concept 6 calendar – but with instructional minutes equivalent to that of a 180-day calendar school – lost instructional time is curtailed for Concept 6 students. In contrast, students on a 180-day calendar lose this instructional time 17 more days than Concept 6 students and have no means for recouping some of this lost time.

discretion of a teacher – and, in my experience, teachers in all calendar type schools differ in their approaches.

Dr. Oakes singles out Track B as particularly suffering from lost instructional time as a result of the Concept 6 calendar. (Oakes, p. 23.) Again, Dr. Oakes is wrong. While it is true that Track B students have a different vacation schedule than Track A and C students, there is no evidence that the break schedule causes lower achievement or harms Track B students. Where lower achievement levels may be found, it is likely that lower socio-economic status is the cause. As Dr. Mitchell notes, it is parental choice that dictates track assignments, and parents with low socio-economic status often do not take advantage of the "first-come, first-served" track assignment process. (R.E. Mitchell & D.E. Mitchell, *Year-Round Education: Student Segregation and Achievement Tracking In Year-Round Schools* (1999), pp. 24-25.) Because Track B is in school from May to August – and some parents have come to expect vacation time only at that point in the year – parents with higher socio-economic status take advantage of the "first-come, first-served" process and choose either Tracks A or C. Often this circumstance leaves students from low socio-economic status families in Track B, with vacation in September (a month with summer temperatures in California). As previously discussed in Section VII(A)(2) and Section VII(A)(3) herein, it is the low socio-economic status and factors associated with that status that result in lower achievement, and not the school calendar or track assignment. (See also id. at p. 19 ("Thus we can readily conclude that most of the inter-track differences in student achievement are the result of demographic segregation across the tracks.").)

Dr. Oakes' argument regarding Track B teachers likewise fails. Dr. Oakes claims that Track B teachers must begin a new school year without adequate preparation time

and often without end-of-the-year evaluations regarding students from their prior year's teachers. (Oakes, p. 24.) Track B teachers, however, have the same amount of on- and off-track time as Track A and C teachers, meaning they have the same amount of time to prepare for the next academic year. Thus, Track B teachers have adequate preparation time regardless of the fact that the academic year may roll over more quickly for them. Furthermore, as Dr. Oakes' admits, teachers have a good sense of students' academic performance, as well as knowing students' first semester grades, prior to the end of the academic year. (Oakes Dep. at pp. 513-14.) This insight can be passed on to a Track B teacher in the next grade level prior to the end of the academic year.

Significantly, Dr. Oakes does not offer any credible evidence that Concept 6 schools result in lost instructional time or adversely impact students.

D. Multi-Track Year-Round Schools Provide Equal Access To Educational Opportunities.

Dr. Oakes claims that multi-track year-round schools, particularly Concept 6 schools, do not provide equal access to educational opportunities. (Oakes, pp. 26-31.) Dr. Oakes fails, however, to distinguish between high schools and middle and elementary schools. In fact, most, if not all, of Dr. Oakes' complaints apply only to high schools. As set forth herein, even with respect to high schools, Dr. Oakes' claims regarding access to educational opportunities fall short.

As Dr. Oakes admits, each track on a multi-track year-round calendar is essentially a separate school. (Oakes, p. 28.) As such, each track generally provides access to educational opportunities equal to that of traditional schools of comparable size. It would appear from their reports that Drs. Oakes and Mitchell want both smaller schools in terms of size, as well as course offerings commensurate with larger schools. (See

Section VII(B) herein; Mitchell, p.8.) They cannot have it both ways. They either accept that smaller schools (including the separate schools created by the tracks in a multi-track year-round calendar) do not maintain the capacity to offer the same panoply of course offerings as large schools, or they accept larger schools.

For example, if a high school of 3600 students implements a Concept 6 calendar, each of its tracks would have approximately 1200 students on that track. Obviously, a high school of 1200 students will not offer as many courses and specialized programs as a high school of 2400 students. Essentially, all tracks of a multi-track year-round school offer a full range of courses and specialized programs as would be expected of a high school of 3600 students, and each of the tracks offers courses commensurate with expectancies of a school of 1200 students.

Furthermore, while it is true that not every course is offered on each track of the calendar, the offerings are comparable to similar schools and adequate to provide equal access to educational opportunities. For example, Garfield High School offers 38 AP classes in the 2002-2003 school year, over all three tracks of its calendar.[18] Bell Senior High offers a total of 37 AP classes, with 11 AP classes on Track A, 13 AP classes on Track B and 13 on Track C.[19] With the number of AP classes on Track B at Bell Senior High, Drs. Oakes' and Mitchell's contention that Track B necessarily offers fewer educational opportunities is unfounded. (Oakes, pp. 23-24; Mitchell, pp. 8-9.)

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[18] The Advanced Placement classes offered in 2002-2003 at Garfield High School, a Concept 6 high school in LAUSD, total 38 in number. The subjects are as follows: Calculus, Chemistry, Computer Programming 1A, Drawing, English Language, English Literature, Environmental Science, European History, French Language, Macroeconomics, Microeconomics, Physics, Spanish Language, Spanish Literature, US Government and Politics and US History. (Data forwarded by Mr. Alonso Gil, Advanced Placement Coordinator, Garfield High School.)

[19] Mr. Mel Mares, principal of Bell Senior High from 1990-2001 and now in the central administrative offices, verified that Bell Senior High currently offers 11 AP classes on Track A, 13 on Track B, and 13 on Track C, for a total of 37 AP classes. (Telephone conversation on February 27, 2003.)

Dr. Oakes and Dr. Mitchell also claim that the multi-track year-round calendar fosters curriculum tracking, alleging that course offerings are not equal across tracks. As admitted by Drs. Oakes and Mitchell, however, curriculum tracking is not a unique symptom of the multi-track year-round calendar, as all schools in one way or another engage in such practices. (Oakes Dep. at p. 515; Mitchell Dep. at 120.) Indeed, when I was a student, I was forced to choose between chemistry and band. Band won and chemistry lost. There simply is no way in any calendar school to offer every course to every student. As in life, high school is a series of choices.

Furthermore, Concept 6 students are typically allowed to cross-track, meaning they can jump to another track for particular course credit. (See Oakes Dep. at p. 521.) In this sense, multi-track students have access to course variations typical of larger schools, while at the same time afforded a smaller school atmosphere within their individual tracks.

School districts sometimes encourage parents to enroll in one of the attendance tracks they might not otherwise consider in an effort to enhance students' educational opportunities. For example, Dr. Mitchell cites disparagingly to a practice employed by the Oxnard, California School District whereby children of Mexican migrant families were encouraged to enroll on either of two of its four tracks (one of which was off-track in December and the other that was off-track in January) since this population was known to take extended vacations from early to mid-December through January, when there was little demand for its labor. (Mitchell, p. 25.) The purpose of this attendance tracking, logically, was to avoid extended absences by children of migrant workers in December and January when this population was on familial vacations, and to boost their annual

days of attendance by assigning them to tracks that were in session when their families were in town.

Dr. Mitchell also, incredibly, finds fault with the practice of some school districts to track the Gifted and Talented Education program ("GATE") – which often includes students with higher socio-economic status – on less preferred attendance tracks. (Mitchell, p. 19.) The purpose of this type of attendance tracking is to ensure that the less preferable tracks are not relegated only to students with lower socio-economic status. In both examples, school districts were attempting to balance the attendance tracks to help students achieve more days of attendance (as in the Oxnard example) or to ensure that there were enriched opportunities across all tracks (as in the GATE example). It is hard to understand why anyone would object to such tracking.

As evidenced herein, multi-track year-round schools provide equal access to educational opportunities.

E. Calendar Breaks On The Multi-Track Year-Round Calendar Are Comparable To Breaks On The Traditional Calendar.

Dr. Oakes alleges that Concept 6 is wrought with "ill-timed" breaks. (Oakes, p. 31.) Ill-Timed breaks, however, are not unique to Concept 6 schools. In fact, the alleged "ill-timing" of breaks on the Concept 6 calendar are comparable to those of traditional calendar schools. Indeed, many of the breaks we have now come to accept on the traditional calendar are particularly ill-timed. Furthermore, the breaks of the Concept 6 calendar do not, as Dr. Oakes alleges, limit access to extracurricular activities and enrichment programs.

There are obvious ill-timed breaks on the traditional calendar. For example, Thanksgiving through the end of January results in an awkward schedule. The

Thanksgiving holiday break, which is not a major break in and of itself, is followed by a period of minimal instructional focus over the next 3-4 weeks as holiday activities take center stage. This is usually followed by a two-week winter break, after which time students come back to prepare for important first semester exams that occur three weeks after the winter break. From an instructional perspective, this schedule is a classic example of ill-timed breaks.

Semester breaks also are ill-timed. The first semester of the traditional calendar usually ends on a Thursday or Friday, with the second semester beginning the following Monday or Tuesday. Much like the responsibilities Dr. Oakes complains of for B Track teachers on a Concept 6 calendar at the end of an academic year, at the semester break in traditional calendar schools, teachers are expected to grade final first semester exams, record the grades for placement in permanent record files and initiate a course outline for the second semester. Opting for the traditional school calendar is not a way to avoid ill-timed breaks, since all calendars – traditional and year-round – have some form of ill-timed breaks. Simply, "ill-timed" breaks are not unique to a Concept 6 calendar, but rather a function of educating students on any calendar.

Also, as Dr. Oakes agrees, research indicates that low socio-economic status students generally do not enhance learning over breaks. (Oakes, p. 34.) In fact, the results indicate that these students actually lose ground on the traditional calendar break. (See Section VII(A)(1) herein.) The shorter breaks of the multi-track year-round calendar curtail learning loss for disadvantaged students and provide opportunities for intersession throughout the school year, rather than waiting until summer when a student may be very far behind.

Moreover, access to extracurricular activities and enrichment programs is not curtailed by the breaks of a Concept 6 calendar. In contrast to Drs. Oakes' and Mitchell's allegations, there is time and space available to provide intersession to multi-track year-round students. Indeed, in two of the newspaper articles cited by Dr. Oakes in her report, students in multi-track year-round schools discuss their attendance at intersession classes. Ashley Ramos of North Hollywood High School stated that she attends intersession classes during her B Track vacation. (S. Abdar – Rahman, *Calendar Can Leave Students Out in the Cold*, L.A. Times (March 17, 2002).) Jose Di Raimondo at North Hollywood High School also spends his off-track time attending intersession classes and working at a clothing store. (Id.) In another article cited by Dr. Oakes, students at Hollywood High School stated that they are happy at school and grateful for the opportunity to make up classes during vacation. (D. Helfand, *Year-Round Discontent at Hollywood High School*, L.A. Times (November 20, 2000).) Communities, also, have implemented intersession programs for year-round students. For example, the Los Angeles Department of Recreation provides free off-track enrichment programs to students 5-18 years old on a year-round basis, which served approximately 140,000 students in 2000-2001. (S. Abdar – Rahman, *Calendar Can Leave Students Out in the Cold*, L.A. Times (March 17, 2002).)

Students also have off-track opportunities for work and enrichment. As previously noted, Jose Di Raimondo of North Hollywood High School spends his off-track time working at a clothing store and attending intersession classes. (Id.) In fact, the career counselor at North Hollywood High School stated in this same article cited by Dr. Oakes that he has no problem placing juniors and seniors in jobs during their off-track breaks because "companies don't have a need for employees only during the summer." (Id.) Indeed, work experience is just as available in autumn, winter and spring as it is in

summer. Entry-level jobs for sixteen-, seventeen- and eighteen-year olds (primarily fast-food and grocery operations) are available at all times of the year. It makes little sense, from a job-seeking perspective, to have all high school and college students seeking the same all-too-few jobs only in the months of June, July and August.

Furthermore, enrichment programs occur all year round, and there are programs that students off-track in the summer miss. For example, the most significant programs in the arts fields do not occur in the summer. In my experience, it is a common circumstance that traditional calendar students do not have the opportunity, because of schedule conflicts and calendar limitations, to take advantage of lower-cost theatre or musical matinees, or free museum admission days/hours throughout the high point of the arts season. Off-track students, if they are interested, can do so. Thus, for every experience that an off-track student may miss, there is another experience that students on-track may miss, a circumstance not unlike the lives of all humans, adults as well as students.

Moreover, students off-track at times when various school activities occur are invited to participate. In contrast to Dr. Oakes' allegation in her report, students off-track in the Fall are not precluded from participating in college recruiting activities on campus. Indeed, she admitted this was the case in her deposition. (Oakes Dep. at p. 521.) In fact, off-track students have the opportunity to participate in the college recruiting season without the burden of keeping up with their coursework at the same time. The same is true with athletes. In my experience, students are welcome to join sports teams that play in seasons when they are off-track, and can do so without trying to balance practice and game schedules with coursework.

There simply is no evidence that breaks on a multi-track year-round calendar harm or disadvantage students.

VIII. Specific Rebuttal To Drs. Oakes And Mitchell.

Throughout this report, I have addressed various issues raised by Drs. Oakes and Mitchell in their reports. In Section VIII, I address specific issues raised by Drs. Oakes and Mitchell that are not addressed in the other sections of this report.

A. Dr. Mitchell.

- Dr. Mitchell found that, after applying the School Characteristics Index ("SCI") and reviewing the Similar Schools Rank, the scores of students in traditional, multi-track and Concept 6 schools are similar, but that there are differences in rank. (Mitchell, p. 20.) The Concept 6 category, as well as the multi-track (not Concept 6) category, are alike at rank 5, while the traditional/single-track category is ranked as a 6, a circumstance Dr. Mitchell indicates might be due to the fact that a particular locale contributes variability. Nevertheless, Dr. Mitchell attempts to avoid the issue of locale by stating: "In particular, I have avoided the problem of interaction with location. That is, school calendar policies are typically situated in particular school districts, such that particular locales contribute variability that cannot analytically be separated from the calendar under which they operate." (Mitchell. p. 29.) He goes on to state, though, that "(h)owever, I did investigate the possibility indirectly by comparing district-level characteristics, where the Concept 6 calendar had been implemented, with within-district calendar group characteristics. The Concept 6 schools were noticeably dissimilar from the other schools

within the same district, not just across districts. This provides evidence that calendar and locale are not impossibly confounded." (Id.)

Yet, Dr. Mitchell acknowledges that one part of a district may be different from another part. For example, in a large district such as Los Angeles Unified School District ("LAUSD"), the communities of Huntington Park and communities in the San Fernando Valley are different in many ways, including socio-economic status. There is no avoiding the fact that locale does make a difference in the school year calendar utilized. It is not only the geographical locale that makes a difference, but also the socio-economic locale. Indeed, it is socio-economic factors that pull in greater numbers of people to live in a specific area - more than anticipated - requiring new thinking about how to safely enroll large numbers of students. Thus, in those locales with dense populations, schools are impacted to the degree that the implementation of multi-track year-round education is required in order to contain the problem of overenrollment. The calendar, therefore, is dictated by the locale.

- Dr. Mitchell claims that "(t)he pattern of segmentation placed the students with the greatest educational need on the tracks with the least experienced teachers, while the most experienced teachers were with the highest performing students." (Mitchell, p. 2; see also pp. 16-17, 18, 26, 27 and 28.) The operational calendar of a school, however, may be the least important of several factors that affect at which school a teacher chooses

to teach. In fact, the primary factor influencing teacher choice is district-teacher union contracts that allow experienced teachers (often teachers with the most seniority) to choose his or her teaching assignment. Given the choice, teachers typically choose to avoid a school or track with harder-to-teach students, such as those with limited English language proficiency. Or, a more experienced teacher might choose a traditional calendar school because that is the calendar with which (s)he is most familiar.

This problem, though, may dissipate as districts change their approach to teacher selection in union contracts. For example, LAUSD, one of the districts utilizing the Concept 6 calendar, is currently in the process of addressing teacher selection in its union contract. In their July 2002 report, White and Cantrell found that "the gap in credential teacher status is shrinking." (J.A. White, M.A., and S.M. Cantrell, Ph.D., *Comparison of Student Achievement and Teacher and Student Characteristics in Multi-Track Year-Round and Single-Track Traditional School Calendars: Update 2000 to 2001* (July 2002), p. 11.) In particular, in 1999, Tracks A and B exhibited the largest gap in credentialed teachers (23%), but by Fall of 2001 this differential was reduced by half (10.5%). (Id.) White and Cantrell went on to note that the "results suggest that teachers may have used seniority rules in the past to secure assignment to the most desirable track. This may be changing. A new policy, beginning in the fall of 2001

gave principals greater control over teacher assignment to tracks." (Id. at p. 12.)

- Dr. Mitchell decided to give "less weight," as he puts it, to findings related to multi-track year-round calendars in other states. (Mitchell, p. 4.) (There are currently multi-track year-round schools operating in Arizona, Utah, Colorado, Nevada, New Mexico, Texas, Florida, North Carolina, Missouri, Illinois, and Pennsylvania.) Dr. Mitchell, then, has chosen to ignore the history of the multi-track year-round calendar, including its success in abating overenrollment throughout the country. By doing so, Dr. Mitchell attempts to paint the multi-track year-round calendar as the calendar of only the poor and minorities. This is not the case. Most of the states that have utilized the multi-track year-round calendar have done so in largely white, middle class suburbs, demonstrating that the multi-track year-round calendar is a response to overenrollment and not an attempt to disadvantage poor or minority students.

- Dr. Mitchell claims that racial or ethnic group membership is strongly aligned with the type of calendar under which schools operate in the State of California, particularly for Hispanic students. (Mitchell, p. 5.) Interestingly, geographic locale, which Mitchell chose to ignore, plays a major role in the degree of overenrollment. While multi-track year-round schools in Los Angeles County may have a large enrollment of Hispanic

students, most year-round Hispanic students in San Diego County attend single-track year-round schools.

- Dr. Mitchell states that while "there are a variety of substantiated claims for reduced overall costs associated with implementation of the multi-track year-round calendar, not all sites or districts realize cost savings." (Mitchell, p. 7.) Dr. Mitchell's statement is misleading. Ever-increasing student enrollment results in more costs, but savings come about because of the economic principle that costs attributed to a larger number of units (students) result in a reduced net cost per unit (student). There are also the very large savings realized in avoiding additional costs associated with new buildings - purchase of land, architects, construction, maintenance and upkeep of the new buildings, as well as the avoided operational costs, such as utilities, cleaning, and the like. *All* sites or districts realize cost savings when multi-tracking is implemented in the usual, time-tested means in which districts have implemented the multi-track year-round calendar over the past three decades. After reviewing countless district cost analyses of multi-track year-round schools over a period of three decades, I have found that any time a district or school has made a claim that savings have not been realized, it was due to a locally-adopted policy that lessens the full spectrum of cost savings. For example, if a school board adopts as a policy that all special education classes in the district will be housed only at year-round schools, such a decision, not specific to

year-round education, will escalate the costs beyond those ordinarily experienced at these schools.

- Dr. Mitchell claims that a multi-track year-round student program is likely to be restricted to the number of regular school days on the calendar. (Mitchell, p. 8.) That may be true only in those multi-track year-round schools severely impacted at the 130% and above level of the stated capacity of the school. As evidenced herein, intersessions are held during the vacation breaks of multi-track year-round schools. Furthermore, year-round educators would propose expanded thinking about curriculum delivery, namely that not all instruction (and certainly not all intersession instruction) must take place within the four walls of the school house. In my experience, I have found that quality instruction can take place in other educational venues, such as science camps, art museums, concert halls and businesses, as well as in programs such as those in Los Angeles where the Department of Recreation provides off-track enrichment programs to students on a year-round basis. (See Section VII(E) herein.)

- Dr. Mitchell claims that maintenance and refurbishment can be difficult to schedule and occasionally requires disruption of the regular instructional day. (Mitchell, p. 10.) While creative maintenance scheduling may sometimes be required at multi-track year-round schools, there is no evidence that the quality and quantity of maintenance is somehow impaired by the calendar or that instructional time is lost.

In fact, maintenance emergencies occur at any calendar type school and those maintenance emergencies sometimes affect school schedules. Furthermore, scheduling routine maintenance at multi-track year-round schools is comparable to scheduling maintenance at traditional calendar schools. Indeed, multi-track year-round schools can be maintained and refurbished in the same manner as such entities as hospitals, hotels and airports, which are open for business even longer than schools – 24 hours a day, seven days a week. While some critics of multi-track year-round education assert that schools are to be cleaned only from 7:00 am - midnight, Monday through Friday, experience outside of public education shows otherwise.

The Oxnard School District took the lead many years ago in proving that multi-tracking and up-to-date cleaning and refurbishing were compatible. By hiring outside contractors, the district repainted the entire inside of an elementary school in one weekend. Where cleanliness and refurbishment problems have surfaced in multi-track year-round schools, the culprit has almost always been a union contract limiting the working hours of custodians, and not the calendar itself.

- Dr. Mitchell claims that, based on their population statistics, Hispanic students should, on average, be in the plurality across all calendar types. (Mitchell, p. 13.) He further claims that Hispanic students are relatively more likely to be enrolled in a multi-track year-round calendar school.

(Id.) Dr. Mitchell, though, makes a faulty assumption that population spread or population concentration should result in similar school circumstances. Instead, school calendars are adopted to fit local circumstances. If population growth surges in a largely Hispanic neighborhood, the neighborhood school may need to implement multi-track year-round schools as a solution to overenrollment. Multi-track year-round education always follows after the identification of a problem and is never the cause of the problem.

B. Dr. Oakes.

- Dr. Oakes cited extensively to newspaper articles throughout her report. Dr. Oakes' heavy reliance on newspaper articles is surprising. Newspapers commonly report that which is unusual, dramatic, or negative, and tend to sensationalize stories to hold a reader's attention. In contrast to a carefully-drafted research study, newspaper articles do not identify the number of people the reporter spoke with, the questions they posed or how they phrased them, or anything about the accuracy of the underlying facts or slant of a story. Dr. Oakes' reliance on newspaper articles, therefore, is evidence of the lack of well-researched support for her theories regarding the Concept 6 calendar.

- In her report, Dr. Oakes decries situations where students give up their off-track vacation time to study (Oakes, pp. 30-32), while, at the same time, she decries the fact that on a multi-track year-round calendar there is no

time like summer vacation to go to school to receive additional instructional help. (Oakes, pp. 33, 34.) Dr. Oakes' arguments are internally inconsistent. Furthermore, intersessions are far more valuable to students than summer school. (See Section VII(E) herein.)

- Dr. Oakes cites to a Lou Harris survey that suggests that 42% of California teachers felt that the multi-track year-round schedule interfered with their ability to cover the curriculum. (Oakes, p. 38.) Initially, Dr. Oakes' report provides *no* information as to how this survey was conducted. Furthermore, under Harris' survey, a majority of the teachers (58%) felt that they could, indeed, cover the curriculum. Moreover, most of the 42% who felt they could not cover the curriculum were afforded the same 180 days as any other teacher in California, with the exception of those on Concept 6 calendars, which do provide the equivalent instructional minutes. In my experience, I suspect that 42% of teachers teaching on any school calendar would respond that they could not cover all of the curriculum they hoped to because there is simply too much to teach in the time available. This is a common complaint of teachers in all calendar type schools.

Furthermore, there is evidence that teachers are satisfied with Concept 6 schedules. Dr. Zengshu Chen surveyed teachers in Concept 6 high schools as a part of his doctoral dissertation. What he found was a high level of satisfaction among teachers involved with the school calendar. (Z. Chen,

Year-Round Education: High School Student Achievement and Teacher and Administrator Attitudes (1993).) The result was not unanimous, but there was a clear majority support for the calendar.

- Dr. Oakes claims that the Concept 6 calendar, and, presumably, all multi-track year-round calendars, harm students. There is no evidence supporting this theory. In fact, history would indicate otherwise. Since California's first multi-track year-round schools opened in 1971 in San Diego County, there have been three decades of experience with the calendar option. One would have to believe that students in those first seven multi-track year-round schools, had they truly been harmed, would have by now shown themselves to be damaged citizens of the State. No such evidence exists. Neither Dr. Oakes, nor any other critic of multi-tracking, has shown long-term, or even short-term, damage because of the implementation of multi-track year-round education.

- Dr. Oakes, while acknowledging the need to utilize Concept 6 to handle the most severe cases of overcrowding (Oakes, p. 12), criticizes Governor Davis for vetoing SB 2027, which would have banned Concept 6 by 2008. (Id. at pp. 13-14.) An all-out ban simply makes no sense. Districts may, for one reason or another, rely on a Concept 6 calendar as a response to population growth. Also, resort to a Concept 6 calendar may be required in response to an occurrence such as a natural disaster, which could cause the closure of schools in a district, thus impacting neighboring schools.

The Governor was right to look at the issue with a long-term view, and the veto was logical.

IX. Opinions and Conclusions.

In summary, the previous sections of this paper have advanced the following major ideas:

1. Multi-track year-round education is a reasonable and sustainable solution to the identified problem of school overenrollment.

2. Multi-track year-round education is the only solution to overenrollment that has a recognizable educational component to it. California school districts utilizing multi-tracking have selected the best solution available to them for mediating the student housing crises they have already faced or will face in the future.

3. Students attending multi-track year-round schools have equal opportunities to learn, equal time to learn, and equal access to those elements of instruction considered necessary for a quality education when compared with students in traditional calendar schools.

4. Students attending multi-track year-round schools, including Concept 6 schools, have demonstrated test score gains consistently over time.

5. Students attending multi-track year-round schools, including Concept 6 schools, have shown academic results on par with, and in many instances superior to, similarly-situated students attending traditional calendar schools.

6. There is no educational research that demonstrates academic harm to students enrolled in multi-track year-round schools, including Concept 6 schools, nor is there research that evidences a causal relationship between multi-tracking and lower achievement scores on the part of students enrolled in multi-track year-round schools.

7. Plaintiffs and their experts have not provided credible evidence to bolster their claims that multi-track year-round schools result in unequal educational opportunities for some students, provide an educational environment experiencing greater academic disadvantage than traditional calendar schools, or block equal access to educational opportunities.

8. Plaintiffs and their experts further have not provided credible evidence to support their claims that students attending Concept 6 schools face clear disadvantages that traditional calendar students do not face, nor have they provided evidence to demonstrate their claim that Concept 6 students will realize an adverse impact that will be compounded and reinforced over the years.

9. The historical record of students attending California's first multi-track year-round schools over the past 30 years does not demonstrate academic harm to these students nor to the State of California's citizenry.

In conclusion, then, multi-track year-round education is a positive option for California's school districts and schools faced with the task of ameliorating overenrollment.

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