

I. Qualifications

Since 1988 I have worked as a private consultant to California school districts on facilities and related issues. Many school districts lack the staff or expertise to comprehensively analyze facility needs, make enrollment projections, and interpret state regulations. My client districts choose to pay an independent consultant like me to perform these services. My other consultancy projects involve writing a long range Master Plan or other study that requires more time than staff has available given their other workload demands. In both cases, I step in as consultant to perform research, prepare analyses, write a report, and generally present that report to the governing board or other group. Preparing a Master Plan or similar document involves meeting staff; visiting schools; meeting city and county planners; talking with custodians, teachers, school secretaries, and maintenance staff; and generally getting to know the community. Tom Peters writes about "management by wandering around" (Peters, *In Search of Excellence* (1982)); I practice consulting by wandering around. It is the only way to really understand the needs of schools within a school district and be able to speak beyond the broadest generalities. I wander around schools because there are differences among schools and among classrooms – for example, an old portable is not the same as a modern classroom – and it is important to facilities analysis to assess the actual conditions at a school site. My expert report explains how and why schools are different, and why some are so far out of the norm that some form of intervention is needed, which is why I have agreed to assist in this effort.

In my twenty plus year career as a school facilities consultant I have researched and written more than 100 studies, including Facility Master Plans, school facility needs analyses, and developer fee justification studies. Other projects have included facilitating community advisory task forces, preparing state eligibility documents, analyzing and recommending school attendance boundary changes, assisting with city-school district liaison efforts, planning schools for new towns, and conducting numerous other studies to assist school administrators with management and planning for facilities. Most studies are written reports; other studies are incorporated in staff-prepared documents. Some studies have been conducted in affiliation with or as a sub consultant to other professional firms.

Previously I have worked as Director of Facilities and Planning for the Conejo Valley Unified School District (1987-1988), Business Manager of the Oak Park Unified School District (1982-1986), and Assistant Planner for the Irvine Unified School District (1976-1982). These jobs involved planning and designing new schools, maintenance of existing schools, and budgeting, among other responsibilities. To perform these duties, I was required to possess and maintain current knowledge of state laws and regulations governing school construction, budgeting, and operations; to participate in professional meetings and conferences where practices and opportunities were discussed; and to evaluate internal practices for consistency with state law and best management practices. My education includes an MBA (1981) and BA in Planning (1976), both from U.C. Irvine.

As author and principal researcher on the studies noted above, I have personally visited schools in every district for which I have worked. When determining capacity of schools, I have visited schools to verify room counts and facilities available or to validate information provided by district staff. A school visit includes review of the school's exterior, interior courtyards, playgrounds, cafeteria/multipurpose room, one or more student restrooms, typical classrooms, special facilities, and other aspects of the school. I have conducted literally hundreds of such visits over the past 25 years. In addition, I have spent large blocks of time at schools attended by my children as a parent volunteer, Parent-Teacher Organization (PTO) member and officer, parent using school facilities as a scouting/sports/community activity parent, and similar activities.

At various times during these 25 years I have belonged to statewide organizations including the California Association of School Business Officials (CASBO), Association of California School Administrators (ACSA), and Coalition for Adequate School Housing (CASH).

II. Scope Of Assignment

I have been asked by the plaintiffs in the Williams case to offer opinions on the following subjects:

1. The existence and prevalence of unusually poor facilities conditions in California public schools.

2. The extent to which state actions or inactions contributed to the existence of unusually poor facilities conditions for students in California public schools.

III. Summary Of Conclusions

There is a significant problem in California with school facilities that are in unusually poor condition. I have seen some of these schools and found ample evidence that the problem is broader than the specific schools I have visited.

The state has had knowledge of this problem for many years. I have found written reports dating back over twenty years discussing seriously deteriorated school facilities.

The state has taken actions and declined to take other actions that have contributed to this problem in a substantial way. Specific examples include:

- Failure to promulgate minimum standards for school facility conditions and maintenance.
- Failure to set up a systematic means of monitoring conditions in schools throughout the state.
- Failure to have an effective investigation and correction process when serious deficiencies are reported to state officials or presented in news reports.
- Failure to set up a system that, through incentives or requirements, ensures that local school districts keep schools in acceptable condition.
- Establishment of a system of state financing that has not ensured that funds are available to and used by districts with schools in the poorest conditions.

Unusually poor conditions in schools are preventable through appropriate oversight and management to ensure commitment, performance, and follow-through. In my experience, the biggest impediment to solving facility problems is garnering commitment from school and district officials, which is rooted in an absence of enforceable standards. Each and every student in California's system of public schools deserves the assurance of adequate school facilities. Because it is feasible to provide such an assurance of adequate school facilities to all children, California has no excuse for the unusually poor conditions in schools that this report describes.

Conclusions presented above are based on my personal knowledge and research including published reports.

IV. Definition of "Unusually Poor Conditions" in Schools

In this report, I use the term "unusually poor conditions" to refer to those conditions in a school that are noticeably poor when compared to the normal and usually expected conditions in a California public school serving grades kindergarten through twelve. I included in this term both exterior and interior spaces. The term "conditions" refers to cleanliness, functionality, temperature, ventilation, lighting, crowding, and access to expected areas for personal care and comfort (including to toilets, sinks, hand drying, privacy for personal care, drinking fountains, and shade).

The term "unusually poor" is used, for example, to distinguish school restrooms that are merely untidy or littered from daily use from those that have extreme odor or non-functioning toilets, lack any hand towels or toilet paper, have no privacy doors on stalls, or exhibit other unusual features that an average adult would identify as below standard for use by a school age child or youth. I presume most adults have experienced a restroom sometime in their lives where the odor and filth assaulted the senses. Adults can get in their cars and drive to the next gas station or leave the restaurant or wait for the next rest stop. A child at school with restrooms such as these – and they do exist in California schools – has none of these options, unless waiting for the 3:00 bell and returning home is considered an acceptable option.

While any school can experience broken equipment, dirty conditions, or other facility problems at some point in time, what further distinguishes schools with unusually poor conditions is the severity and persistence of these problems. Criteria I have applied to distinguish schools with unusually poor conditions from schools with typical conditions include:

- Broken or potentially hazardous structural elements, fixtures, or building components in areas accessible to students.
- Excessive heat, cold, or lack of ventilation.
- Noise levels from equipment, traffic, or other persistent sources that interfere with conversation at normal levels, and thereby interfere with the learning process.

- Inadequate lighting in classrooms and other study areas (e.g., the library or study hall).
- Chronic infestation with vermin (rats or mice, cockroaches, or other pests).
- Lead paint in schools, especially elementary schools, where the paint is chipping, cracking, or peeling.
- Strong evidence of overcrowding such as inadequate numbers of student desks or work stations or long lines for restrooms or lunches or play equipment or obvious crowding from placement of portable classrooms or other changes to the campus.
- Evidence of chronic failure to address maintenance needs and repairs, such as roof leaks that continue for years.
- Any or all of the following for an extended period of time: broken fixtures in restrooms; lack of soap, toilet paper, or paper towels; broken or damaged doors on stalls; non-functioning drinking fountains; excessively dirty conditions in restrooms, cafeterias, lunch areas (indoor and outdoor), hallways, and classrooms; and strong unpleasant odors.¹

V. How Prevalent Is the Problem?

A. Number and Percentage of Schools with Unusually Poor Conditions

As discussed below, there is no statewide inventory or survey of conditions in California's approximately 8,000 public schools. I have visited hundreds of schools throughout the state, but I have not visited all 8,000. Nor have my visits been conducted according to any scientific method of sampling. The majority of my work has not been in poorer urban districts. As a result, without a database of conditions I cannot estimate the specific number or percentage of schools in unusually poor condition. However, I can confidently state that there is a

¹ This discussion focuses solely on problems of facility-related operational conditions in schools. Educational operations are not discussed. Architectural design issues for schools are not discussed.

significant problem with schools that have unusually poor conditions in the State of California, based both on information from others and on my own observations.

Several estimates have been made, and all of them paint a disturbing picture. In 1996, the federal government's General Accounting Office (GAO) estimated that 42% of California's schools had at least one building that was in "inadequate" condition. Only the District of Columbia, Ohio, and Michigan ranked worse. (GAO, 1996.) More recently, state Superintendent of Public Instruction Delaine Eastin has been quoted as saying that about one-third of schools in California are in "crummy" condition such that they are inappropriate places for kids to learn. "We can't have high-quality schools if we have crummy, run-down facilities housing a third of our students as we have today." (Kerr, Sacramento Bee, Aug. 21, 2001.) I believe her estimate is credible, given her long experience with education issues and her position as leader of the state Department of Education. Superintendent Eastin's assessment is similar to that given in a 2001 report by the state Legislative Analyst. "Despite significant sums raised for school construction in recent years, about one in three California students attend an overcrowded school, or one in need of significant modernization." (LAO, 2001)

In a recent survey by the pollster Louis Harris, in which a random sample of 1,071 teachers was interviewed, teachers were asked a number of questions about their schools. Some of those questions were about the condition of their facilities, including a question that asked them to rate their facilities as one of the following: "excellent," "good," "only fair," or "poor." Approximately 10% reported conditions in their school as "poor" and another 22% rated their schools as "only fair." Added together, this gets back to the one-third figure of schools with facility needs mentioned just above.

Teachers' Evaluation of The Condition of Their School Facilities

Excellent	Good	Only Fair	Poor
222 of 1,071	503 of 1,071	235 of 1,071	111 of 1,071
20.7%	46.9%	21.9%	10.4%

Source: Harris Survey, 2002.

In my experience visiting and inspecting schools, I have seen numerous examples of schools where the conditions are unusually poor. I have visited classrooms in summer months where the heat is immediately apparent, and the students look tired and limp, with obvious difficulty paying attention. In these classrooms, the doors are often shut because of outside noise, leaving the choice of heat or noise. (Windsor (Sonoma County), mid-1990s; Montebello (Los Angeles County), mid-1990s; San Jose, early and mid- 1990s; Stockton, 2000.)

I have seen students not allowed to use the bathroom until recess because the bathroom in their wing was out of order and the teacher couldn't let them go all the way around to the other side of the campus without adult supervision. (Gilroy, late 1990s.)

I have heard students and parents complain about not having a chance to eat due to the long lines due to crowding. (Multiple locations.)

I have been in classrooms and other rooms where flickering light bulbs distract me, the temporary visitor, with very likely a similar effect on the students sitting underneath the malfunctioning fixture. (Oakland, 2000; San Jose, late-1990s.) My escort will say something like "a work order has been filed," with the resignation that the problem isn't new.

I have seen red-faced sweaty kids on the playground because the drinking fountain is broken or vandalized and no other water is available. (Santa Clara County, Sonoma County, various summers.)

I have seen bathrooms locked due to problems so that the ones open have long lines. (Oakland, 2000; Gilroy, late 1990s; West Sacramento, 1999; Salinas, mid-1990s.)

Stories could go on, but the point is these conditions exist and kids are affected. These problems are fixable, but the system isn't working because the problems keep recurring. I recognize that equipment will break or malfunction and problems will result. But these

conditions are not isolated or limited to some insignificant number of schools. Nor, as I will explain below, do they exist solely in a certain portion of California, or just in urban areas.²

Given the absence of any statewide assessment of school facilities, no exact count is possible at this moment. However, given the range of available information, from the assessments of Delaine Eastin, the LAO, and other published reports; the figures in the Harris poll; and my personal experience, I conclude that this number, whatever the exact count, is significant. I believe about one-third of schools have one or more non-insignificant facilities needs. My feeling is that the number of schools in what I describe as "unusually poor condition" is a subset of the one-third figure put forth by Superintendent Eastin and the LAO. Probably the percentage of schools in that condition is no greater than the percentage of teachers in the Harris survey who describe the conditions of their schools as poor – about 10%. However, I have not employed any scientific method of assessment to reach this estimate.

I think it is important to look at this issue in human terms of the number of children affected, not just from the perspective of a statewide percentage of students. There are about 8,000 public elementary, middle, and secondary schools in California. When state Superintendent Eastin refers to "one-third" of the schools she is referring to more than 2,600 schools, which, in my opinion, is a lot of schools. If ten percent of the schools are in "unusually poor condition" then we would be referring to 800 schools, which, in my opinion, also is a lot of schools. Using a conservative estimate of 500 students per campus,³ ten percent of the schools would represent about 400,000 of California's 6.1 million students. In my opinion, even if only one percent of campuses have unusually poor conditions the number remains very, very significant: 80 campuses averaging 500 students each means that 40,000 students are affected.

² These problems tend to be more prevalent in urban schools and schools with high numbers of minority students, English Language Learners, and poor students.

³ Many schools house many more students, with some campuses housing as many as 6,000 students.

In the abstract, this is objectionable. In the particular, considering the faces and names and individual situations of affected children, this situation cannot be allowed to continue.

The critical nature of California's school facilities problems deserves emphasis. If 400,000 students got sick from eating bad hamburger served in school lunches, the Governor would probably declare an emergency and possibly call in the National Guard to search out the bad stocks of meat. Yet 40,000 to 400,000 students experiencing unusually poor conditions today, tomorrow, and next month get little more than a collective shrug and a dismissive reaction as if "it's only a few percent." This attitude doesn't give relief to the children, families, teachers, and school staff affected.

While I was visiting a small K-8 school in the rice fields of south Sutter County, a rural community north of Sacramento, the Principal/Superintendent A. J. Hyatt told me in so many words that 'time is the only currency kids have'. Our job as educators is to use their time wisely and give the children something valuable in return for the time they give us every day.

Time in school is important to kids. It is often the biggest block of time in their day other than sleep. Many kids spend more time in their classrooms than in any other room during their day. School is their place to learn, and they shouldn't have to brush off cockroaches, sweat, shiver, strain to hear, get dripped on from rain, or put up with any of the other insults caused by unusually poor or very crummy schools.⁴

B. Neighborhoods Where Poor Conditions are Commonly Found

Schools with unusually poor conditions are not limited to one school district, one city, one county, one region, or one "type" of neighborhood. As discussed below, examples occur from the far south to the far north, from the coast to the inland valleys, from large cities to small rural communities. Nonetheless, I have observed that schools with unusually poor conditions are most often found in communities identified by student populations that are less likely to be fluent

⁴ Mr. Hyatt put his words into practice: Mr. Hyatt's school was old, but very, very clean and every room was filled with light and materials and the amazing energy of kids working hard and enjoying their time together at school.

in English, more likely to receive free or reduced price lunches, and have related socioeconomic factors. Within school districts, I have observed that campuses with physical problems are more likely to serve minority students, students who are less affluent or students who are more likely to be classified as limited English speakers. In Oakland, the worst school facilities are on the flatlands, not the hillsides. In Evergreen (San Jose) the schools needing upgrades are in the older neighborhoods, not the pricey new neighborhoods. This list could go on and on, but the point is valid all over the state.

Again, there is no statewide survey of all schools, or even a representative sample conducted by the Department of Education or by an independent group using architects or school facility planners, against which I can measure my observations. Nonetheless, the data in the Harris poll is again consistent with my personal assessment. In that survey, Harris created what he called a "risk index," which was based on an evaluation of the percentage of students whose families were on CalWorks, the percentage who received free or reduced price school lunches, and the percentage of English Language Learners (ELL). He broke down the data so that one could compare the results for schools in the higher risk groups (those schools with the higher concentration of low socioeconomic status and ELL students) with those in the lowest risk group (schools with the lowest concentration of low socioeconomic and ELL students). Only 4.4% of the teachers in the low risk group rated their school facilities as poor, vs. 18.2% in the high risk group. (Harris, 2002.)

Teachers Who Rate Their School Facility Conditions As Poor By Risk Group

0-51%	52-60%	61-80%	81-100%
24 of 543	17 of 99	31 of 215	39 of 214
4.4%	17.2%	14.4%	18.2%

Source: Harris survey, 2002

A 2001 report by Dr. Robert McCord that was submitted in the San Francisco school desegregation case (NAACP v. San Francisco Unified School District) supports my observation

that within districts, the schools with high percentages of poor and minority students tend to be the ones most likely to be in unusually poor condition. Professor McCord conducted a school facilities appraisal in the San Francisco Unified School District (SFUSD) in order to assess whether "vestiges of segregation and discrimination in the facilities aspect of SFUSD operations have been eliminated to the extent practicable." (SF 03026.) Professor McCord concluded: "The findings of my school facility appraisal . . . point to a pattern of disparate facility conditions associated with the racial and ethnic identity of SFUSD schools. This pattern of disparate conditions is likely to convey the message of racial inferiority that is implicit in a policy of segregation. . . . Based upon my appraisal and review of relevant materials, it is my opinion that vestiges of segregation related to facilities remain in SFUSD." (SF 03036.)

VI. State's Knowledge Over Many Years of the Serious Facility Problems in Schools and Serious Mismanagement of Facilities at the District and School Level

For well over twenty years, there has been substantial evidence of serious problems with facilities conditions, repairs, and management in various California school districts. Evidence includes establishment of the Lease-Purchase Program in 1976, multiple reports from the Little Hoover Commission, reports by the Legislative Analyst's Office (LAO), the federal General Accounting Office (GAO), and the state Fiscal Crisis and Management Assistance Team (FCMAT), as well as various newspaper articles.

A. The Persistent Statewide Backlog of Maintenance Needs.

The Little Hoover Commission began during the late 1970's to report serious facility deficiencies in public schools in California. In July 1978 the Little Hoover Commission reported "The Commission has also discovered that a massive amount of the state's public school facilities are in very poor maintenance condition, seriously threatening a multi-billion dollar taxpayer investment." (Little Hoover Commission, July 1978.) The report stated, "In a recent survey conducted by the state Department of Education, the state's elementary and secondary school districts reported a backlog of major maintenance needs which would cost over \$742 million to perform. This figure indicates that, overall, school buildings have reached an advanced stage of deterioration." (Id.).

Three years later, the Little Hoover Commission reported, "Statewide enrollment has declined a total of 600,000 students, while maintenance backlogs have increased to over \$900 million." (Little Hoover Commission, June 1981.)

In 1992, the Little Hoover Commission again reported the same types of serious facilities deterioration.

Finding room for new students and the money to pay for those rooms are not the only problems facing school districts. Existing facilities in many cases are deteriorating more rapidly than repairs are made. One legislator who has extensively toured school facilities throughout the state tells of classrooms with buckets strategically placed to catch rain, windows covered with dark sheets to block out the sunlight, broken light fixtures, and bathrooms reminiscent of Third World slum conditions.

(Little Hoover Commission, 1992).

In April 1998, EdSource, a non-partisan non-profit educational research group, published a report entitled "California's School Facilities Predicament." The report reached two primary conclusions. First, although substantial money had been spent on school facilities between 1986 and 1996, the investment had been inadequate to meet the need. Second, there was a gross disparity between the condition of schools in California, with some in quite good condition and others in very poor condition (their term was "deplorable").

EdSource reported:

Californians spent over \$20 billion on school facilities between 1986 and 1996. As a result, some children go to school in beautiful new buildings designed around a new vision of education, but the majority of California's public school students are not in such schools. Because, as large as the investment might sound, it has been flatly inadequate to the tremendous statewide need.

(EdSource, 1998.)

Despite repeated warnings over two decades of massive maintenance needs, the state has allowed those needs not only to grow, but to grow substantially. The LAO's report on the 1997-98 state budget included a section entitled Addressing the K-12 School Maintenance Problem. That report stated:

Inadequate ongoing maintenance has long been a problem for K-12 school districts resulting in huge backlogs of deferred maintenance. In 1979, the SDE [State Department of Education] estimated that the deferred backlog among K-12 school districts was

approximately \$900 million or \$1.7 billion in today's dollars. By 1995-96 the backlog totaled \$2.6 billion, which even after adjusting for inflation, is a 53% increase over 1979.

(LAO, 1997.)⁵

B. Evidence of Statewide Existence of Health and Safety Problems in Schools

California's school maintenance backlog has resulted in measurable health effects on students. Published reports have also identified the presence of significant levels of specific health and safety conditions, specifically lead and poor indoor air quality, in recent years in schools throughout the state.

1. Lead

In 1998, the California Department of Health Services (DHS) published a report entitled *Lead Hazards in California's Public Elementary Schools and Child Care Facilities*. (DHS, Childhood Lead Poisoning Prevention Branch, *Lead Hazards In California's Public Elementary Schools and Child Care Facilities*, April, 1998.)

DHS tested at a sample of elementary schools and child care facilities to determine the level of lead, if any, in the paint, drinking water, and soil. Under statutory definitions, "lead-based paint" is paint that has a lead-level at 5,000 ppm⁶ or above, while paint with any detectable level of lead is considered "lead-containing paint." According to the report, of the 179 elementary schools at which a full sample was done, approximately 37% of the schools had lead-containing paint where there was some deterioration in the paint. The report also showed that 31.8% of the schools had lead-based paint (5,000 ppm or above) and some deterioration in the paint. The report defined a "deteriorated paint environment" as one "where wall and/or trim paint in a room or exterior of a building from which a paint sample was taken was in 'fair' or 'poor' condition." The Department found that "6.1% of public elementary schools may have

⁵ The Legislature made a similar finding in 1999, concluding that "[a]pproximately \$2.4 billion in backlogged unfounded deferred maintenance needs exist for K-12 schools statewide." Ed. Code Section 17584.1 (legislative findings).

⁶ ppm refers to parts per million; ppb refers to parts per billion.

some soil that exceeds the USEPA [United States Environmental Protection Agency] recommended high of 400 ppm for area in which children play." Finally, 15.5% of public elementary schools had lead in drinking water above regulatory standards, specifically above 15 ppb, the level at which the USEPA considers water to be safe.

In late 2000 and 2001, over two years after the Department of Health Services' April 1998 report on lead in California elementary schools, KCBS television in Los Angeles did a series of news reports on cracking, chipping, and peeling lead paint in schools in the Los Angeles area.⁷ According to the reporter, Randy Paige, he employed a firm that used a device approved by the EPA to test for lead in deteriorated paint he found in elementary schools in the Los Angeles area. Paige reported finding lead contamination in schools in Los Angeles Unified, Pasadena, South Pasadena, La Canada, and Newhall in 17 of the 50 schools tested (Paige, Poison Paint, Part I, KCBS TV, Nov. 5, 2000). In one of the initial stories, after being shown videotape of peeling and chipping lead paint, Superintendent Roy Romer committed to testing all the elementary schools in LAUSD for the presence of lead paint. In a subsequent story, Paige reported that LAUSD had tested all its elementary schools and found that a substantial number had lead paint in deteriorating condition.

“LA Unified, the nation’s second largest school district, has now completed those inspections. And the results are staggering. Out of more than 700 elementary and pre-schools, nearly 550 have cracked and peeling lead paint. In other words, 72% of the schools with young children are contaminated.

“The survey work that’s been done by our district in the wake of your investigative report was also somewhat surprising.” LA Unified Health and Safety Director Angelo Bellomo [said]. “We’re finding literally thousands of separate locations in several hundred schools that required some form of lead abatement.”

⁷ Paige also interviewed Superintendent Delaine Eastin and showed her videotape of deteriorated lead paint on windowsills in Los Angeles area schools. After looking at the videotape, Superintendent Eastin stated, “[w]hen you look at those windows, we could be in Soweto, South Africa; we could be in a third world country. The condition of these schools is unacceptable and I do worry terribly about the paint because it can cause permanent brain damage to these children.” (Paige, Poison Paint, Part 2, KCBS TV, Nov. 6, 2000)

The district says 25% of the lead has already been removed or covered up and young children are no longer in direct contact with any lead. But we found plenty of classroom windows with cracked and peeling paint, wooden windows that crushed the lead into a fine dust, where it can get into the classrooms and onto the fingers of young children. We found paint chips on kindergarten playgrounds. We found peeling windows directly above drinking fountains. At Avalon Gardens Elementary, the poles are freshly painted but the window right in front has peeling lead paint that is 30x the EPA limit. Here we found lead paint chips on the ground easily accessible to the children.”

(Paige, Poison Paint, Episode 5, KCBS TV)

In November 2000, the San Francisco Examiner reported the results of a lead-paint survey conducted by an environmental testing firm hired by the San Francisco Unified School District. That study revealed that of the 92 elementary school and childcare sites surveyed, 50 of them (54%) had facilities with damaged, lead-based paint. (Casini, San Francisco Examiner, Action on Lead in School Water, Paint, Nov, 22, 2000).

2. Inadequate Indoor Air Quality

Although I am unaware of any statewide inventory of ventilation and indoor air quality in California public schools, a number of reports have revealed significant problems in this area in schools. In 1995, researchers sampled ventilation rates in non-residential buildings in a California study prepared for the California Energy Commission. Sampling was done in elementary school, middle school, high school, and community college buildings. The report found that "about 20% of the school buildings have air change rates less than half the value required to provide current recommended ASHRAE [American Society of Heating, Refrigeration and Air-Conditioning Engineers] ventilation rate of 15 cfm (cubic feet per minute) per person." (Grot, Lagus, Wan, Milcarek, Air Change Rates in Non-residential Buildings in California (1995)).

A 1996 report by the General Accounting Office, School Facilities: America's School Report Differing Conditions, looked at a variety of school conditions, including ventilation and indoor air quality in schools throughout the country. The report stated that 28% of California's

schools had unsatisfactory ventilation. Unsatisfactory indoor air quality was a problem at 21% of the schools.

A bill pending in the state Legislature sums up needs in certain classrooms. AB 2223 (Keeley) contains the following finding and statement of Legislative intent:

SECTION 1. The Legislature finds and declares all of the following:

(a) In 1996, General Accounting Office found that California's schools ranked as the worst in the nation for indoor environmental conditions, including lighting, heating, noise, and air quality, with 29 percent of California schools being reported with unsatisfactory ventilation and 22 percent being reported with unsatisfactory air quality.

(b) In 1999, the Coalition for Adequate School Housing (CASH) found that nearly 40 percent of school districts sampled in a survey had received complaints about air quality, principally due to moisture, poor ventilation, mold, and inadequate maintenance.

(c) In 1999, a report by the Environmental Working Group, a public interest group, suggested that children in portable classrooms in California are exposed to higher levels of volatile organic compounds, toxic chemicals, and mold.

(d) In 2002, the State Air Resources Board reported that some California classrooms have levels of formaldehyde, a carcinogen, that exceed the Office of Health Hazard Assessment's acute reference exposure level, the level at which a one-hour exposure can result in irritant effects and initiation of immune system response.

(e) More than 20 state agencies and departments, led by the State and Consumer Services Agency, have developed a plan to promote energy conservation and air quality improvement for new state buildings, most notably the multibuilding Capitol Area East-End Project.

(f) In 2001, the United States Green Building Council, a private organization, developed a voluntary self-assessment checklist for rating air quality in existing buildings.

(g) The California Collaborative for High Performance Schools, a public-private partnership, provides incentives for participating schools to achieve better air quality and other environmental objectives through more effectively designed ventilation systems and through regular maintenance.

(h) The Federal Environmental Protection Agency has developed voluntary guidelines (tools for schools) to prevent and solve indoor air quality problems with minimal cost and involvement.

(i) It is the policy of this state that school facilities be designed and operated using reasonably available measures to provide a healthy indoor environment for pupils, including, but not limited to, healthy indoor air quality and adequate ventilation with outdoor air.

AB 2223, amended in Senate June 19, 2002, action pending in Legislature.

C. Critical Maintenance Needs in Particular Districts and Schools

The magnitude of California's statewide school maintenance backlog reflects both increasing maintenance demand as the school infrastructure ages, and persistence of deteriorated conditions in too many of the state's schools. As discussed below, numerous newspaper articles, audits, and studies document the extreme conditions that result from failing to address the critical backlog in facilities maintenance. EdSource has reported: "In some places the situation is extreme. Educators struggle to do their jobs and students struggle to concentrate in overcrowded, deteriorating buildings, with inadequate heating, undependable plumbing, leaking roofs, and peeling paint." (EdSource, 1998.) Superintendent of Public Instruction Delaine Eastin has stated, "I was in a school in Ontario last week. It is so crowded that one group of kids goes to school from 7:00 am until noon, another from noon to 5:00 pm. I was in Sacramento school where they've had to close off rooms because of water leaks and mold. I visited a high school in Fort Bragg that almost fell down because of dry rot." (Guthrie, *San Francisco Examiner*, Feb. 22, 2000)

Below are accounts taken from a variety of sources, including action plans proposed by school districts and their outside evaluators as part of the Immediate Intervention/Underperforming Schools Program ("II/USP"). These accounts, and others not detailed here,⁸ constitute repeated notice to state officials of a serious problem with poor and unusually poor conditions in many schools. These reports are corroborated by depositions and declarations in this litigation as well as by my own observations.

⁸ I intend the sources excerpted below and reported in more detail in section IX to be illustrative but surely not comprehensive. As an avid newspaper reader, I keep finding stories in newspapers from around the state. For example, the *Sacramento Bee* ran a three-part series on May 19, May 26, and June 2, 2002 comparing conditions in Sacramento area high schools. (Deb Kollars, Restrooms Reek of Old Fixtures, Careless Kids, May 19, 2002.) Another article in the same series quotes a student at Sacramento high School: "'You wanna see something?' she said, moving down the row of stall doors. 'this one doesn't open at all, so you have to crawl under it. This one doesn't line up right and you can't lock it, so you're always afraid somebody will walk in on you.'" The article also states that "[o]ne of the biggest reasons for the disparities at Sacramento high and other schools has to do with the age of the buildings and their chronic lack of care." (Deb Kollars, From Textbooks To No Toilets, No Two Public High Schools Are Alike, May 19, 2002.)

These 32 excerpts span fifteen years and represent multiple regions of the state, yet have uncomfortable similarities. I can't certify the accuracy of every word in every article, but these are mainstream, major newspapers with competent fact checking editors. Thirty-two articles assembled with little effort suggest there are many more if one conducted more research. Together, these strongly suggest there is a statewide problem, that the statewide problem has gone on for many years, and consequences of the problems of schools in unusually poor condition have effects that are tangible and damaging for thousands and thousands of students.

Sample quotes and reports:

1. Filthy bathrooms, Taft High School, Los Angeles Unified School District (LAUSD), 1985.
2. No heat, two drinking fountains for 500 students, no water in the nurse's office, Gardner Elementary School, LAUSD, 1988.
3. Bathrooms padlocked, others reeking and filthy, Grant High School, LAUSD, 1992.
4. Bathroom odors affecting school offices; custodians lost to cutbacks, Benjamin Franklin High School, LAUSD, 1994.
5. Filthy, smelly toilets, burned out lights, only dirt on the football field, Jefferson and Fremont High Schools, LAUSD, 1998.
6. Not enough desks for students; long bus rides to available seats, Little Hoover Commission, 1999.
7. Numerous serious health and safety deficiencies, Districtwide survey, LAUSD, 2002.
8. No toilet paper, no soap, no paper towels, no doors on the stalls, Bethune Middle School, LAUSD, 2002.
9. Waterlogged ceiling falls to classroom floor, Simmons Junior High, Oakland Unified School District (OUSD), 1994.
10. Significant heating and ventilation problems, Districtwide survey, OUSD, 1999.

11. Sewer lines cause floods during heavy rains, Stonehurst Elementary School, OUSD, 2000.
12. Broken windows, filthy bathrooms, bird droppings on classroom floors, Compton Unified School District (CUSD), 1988.
13. Facilities have been neglected, underfinanced, and inappropriately maintained for years. This neglect created health and safety problems for students and faculty. State Department of Education referring to CUSD, 1997.
14. Backlog of 2,400 work orders; classrooms without heating or air conditioning, CUSD, 1997.
15. Bathroom facilities have need for cleaning and replacement, CUSD, 1999.
16. Classrooms with only the entry door for ventilation, CUSD, 1999.
17. Permanently out of order toilets, other bathrooms locked due to lack of maintenance, San Francisco Unified School District (SFUSD), 1992.
18. Leaking roofs, filthy bathrooms, SFUSD, 2001.
19. Rat and pest infestation, SFUSD, 2001.
20. No heat inside classrooms or offices, SFUSD, 2001.
21. Decaying infrastructure surrounded by fields of asphalt, West Contra Costa Unified School District (WCCUSD), 2000.
22. Roof leaks leading to extensive building decay, WCCUSD, 2000.
23. Chronic heating, ventilation, intercom problems, Earlimart Elementary School District (Tulare County), 2000.
24. Termite and roof leak damage, Ensign Intermediate School, Newport Mesa Unified School District, 2000.
25. No enough desks and deteriorating bathrooms, Berkeley High School, Berkeley Unified School District, 2001.
26. "Pitiful" school facilities, Fremont Unified School District (Alameda County), 2002.

27. Foul smelling portable classrooms...dingy bathrooms, Ripon High School, Ripon Unified School District (San Joaquin County), 2001.
28. No hot water in gym, no heat in some classrooms and auditorium, and no cafeteria in school, Lynwood High School, Lynwood Unified School District, 1987.
29. Overcrowding and problems with heating/ventilation and AC systems, sewage system, lighting, security, roof structure, rodent control, and cleanliness, Will Rogers Elementary School, Lynwood Unified School District, 2001
30. Temporary classrooms that are unattractive, termite ridden, dark, and under equipped with electrical outlets, Pomona Unified School District, 1995.
31. Teachers and students can't use new computers because the building's wiring is too old to plug them in, Mt. Diablo Unified School District (Contra Costa County), 2002.
32. Possible mold still inside walls, Las Virgenes Unified School District (Los Angeles County), 2002.

D. State Has Longstanding Evidence of Management Problems At the Local Level

With about 1,000 school districts in California it would be difficult for the state to oversee conditions in every school every day. However, the following sections will show that the state has now and has for many years had knowledge of poor facilities management in some California schools, and has failed to implement any ongoing and systematic program to prevent or remedy these management problems.

1. Published Reports Revealed Problems at Certain School Districts

Published reports, on some cases going back over twenty years, show that three of the largest school districts in the state – accounting for about 14% of statewide K-12 enrollment – as well as other smaller districts have failed adequately to manage their facilities programs.

a) Oakland

Over a decade ago, the State Auditor conducted audits of the Oakland Unified School District. Those audits revealed that in the previous decade the District had failed to apply for significant amounts of state facilities funding for which it was eligible. In addition, much of this state funding did not have a local match requirement. (California State Auditor, 1990).⁹ During this time, the District had numerous severe facility problems that could have been addressed by state funds. Recent efforts by the District, some involving state funding, have addressed many needs. Yet many other facility needs, including some mentioned elsewhere in this report, persist today because the long-history of district mismanagement and a long-standing failure of State oversight created an enormous facilities crisis in the district. While Oakland has made some progress in repairing some schools and building some new schools, there are dozens more projects that still need to be done.

The positive steps being taken today in Oakland do not make up for the years of neglect and the thousands of children who have gone to school in unacceptable school buildings in Oakland during the past decades. Nor does the progress in Oakland mean that there are no districts in California where facilities conditions are not seriously deteriorating and the problems continuing or becoming worse. As one example, I know that the facilities program in West Fresno has serious problems and school conditions are deteriorating. In my opinion, it is inevitable that without adequate state oversight, even if some districts, like Oakland, begin to make progress in their facilities program, others will be plagued with mismanagement and resulting school facilities crises that will harm children.

b) Los Angeles Unified School District

For more than twenty years, the Little Hoover Commission has prepared a series of reports highlighting serious mismanagement of its school facilities by the Los Angeles Unified School District as well as a lack of knowledge and management skills at other school districts

⁹ In fairness, it must be noted that the Oakland District has since applied for state funding and is beginning to make gains on its huge facilities need.

throughout the state. For example, in July 1978, the Commission concluded, "Many school district administrators lack the knowledge and managerial skills essential to effecting the economic use of facilities." (Little Hoover Commission, A Study of the Utilization of Public School Facilities (Grades K through 12), 1978).

The Commission also criticized the state for failing to help districts develop necessary managerial skills and knowledge of how to run a facilities program effectively. "The state Department of Education has generally failed to provide leadership in promoting the economic administration of education. In particular, the Department has failed to provide leadership in the collection, dissemination, and promotion of information regarding the methods and benefits of attaining efficient facility use in the face of declining enrollment." (Id.)

In 1981, the Commission published materials sharply critical of LAUSD's management of its facilities program. "Recently, in the course of its continuing examination of school facility utilization and maintenance practices among California school districts, the Commission has received strong, though conflicting, evidence that Los Angeles Unified has failed to manage its physical resources in a cost effective manner, particularly with regard to utilization of its real property." (Little Hoover Commission, The Los Angeles Unified School District (1981)).

The Commission's 1981 report stated:

"The Commission's hearing revealed that LAUSD has failed to economically manage its maintenance program.

- "\$12 million dollars was budgeted in FY 1980-81 to deal with a \$225 million maintenance backlog, while the district maintained a surplus of funds for the past ten years.
- "No plans have been made to deal with maintenance backlogs except in overcrowded schools as the result of a court order. Concurrently, there are no efforts to close and sell underutilized facilities to reduce maintenance costs.
- "In response to Commission questions on facility maintenance, the Board members either avoided responding or stated they could not provide plans as to how the Board intends to deal with the backlog.
- "The district recently established a \$3,165,000 maintenance set-aside fund for use as a match to state funds. This was the only attempt the Commission received that the district had attempted to reduce the maintenance backlog."

(Little Hoover Commission, 1981.)

Despite these warnings over the past twenty years, published reports continue to indicate that severe problems of district mismanagement exist today. For example, a 1999 Little Hoover Commission report "found LAUSD to be a disturbingly dysfunctional organization – too large to serve its students, staffed by an overgrown and inbred bureaucracy, and governed by a narrow-minded board." (Little Hoover Commission, 1999, at 1.)

The report continued:

The Commission believes the facility-related controversies engulfing the district are not one-time episodes. Rather, they are endemic to an agency that is poorly organized, staffed and governed. The victims of this incompetence are 700,000 children, and the taxpayers of California. All of them are relying on school officials who time and again have squandered the public's resources and trust.

(Little Hoover Commission, 1999, at 1-2.)

In November 2001 the *Los Angeles Times* reported, "Los Angeles school officials acknowledged Wednesday that they face a shortfall of as much as \$600 million to repair and modernize schools - the result of escalating costs, contractual disputes, and poor oversight of a \$2.4 billion school bond. The additional money is needed to complete 6,400 construction projects district wide, everything from replacing ceiling tiles to wiring communications systems." (*Los Angeles Times*, 2001.)

A July 2002 article in the *Los Angeles Times* reported the Los Angeles Unified School District has approved seeking voter approval in November 2002 of a local bond of more than \$3 billion for facility expansion, modernization, and repair. This local bond will be matched with state funds from a proposed statewide bond, and are on top of the \$2.4 billion Measure BB bond already approved by the voters. Clearly, LAUSD has a massive facilities problem.

Reports from LAUSD's Internal Auditor in 2000 and 2001 confirmed that serious problems continued in that district's facilities division. These well-researched reviews discuss in detail how individual elements of the District's facilities program failed to serve students. Significant staffing changes and other reforms since then appear to be making a difference, yet news articles continue to appear in the *Los Angeles Times* and *Los Angeles Daily News* of problems at individual schools. Of the auditor's findings, it is disheartening to read of the excessive fees and costs paid on selected high profile projects (such as Belmont High School)

which contrast with the minimal funding and attention given to the daily custodial needs of the schools.

Recent reports from the Office of Public School Construction and articles in the *Los Angeles Times* show the Los Angeles Unified School District applying for state funds and opening new schools. While each step addresses only a small part of the overall need, each signals progress and hope for LAUSD's facility effort.

c) San Francisco

In 2001, the *San Francisco Chronicle* reported serious mismanagement of millions of dollars that were supposed to be used for school construction and modernization:

"San Francisco school officials misspent and mismanaged tens of millions of dollars for school repairs and modernization projects – and then covered it up to win voter approval for more funds, a *Chronicle* investigation found.

"During the past 13 years, the city's school district raised \$337 million through four voter-approved bond and tax measures, but nearly all the money is gone and many promised facility improvements have not been completed or were never even begun.

"Records show San Francisco Unified School District used as much as \$100 million of the bond and tax money to support a sprawling bureaucracy and to finance ill-conceived construction projects that ran far over budget or were never mentioned to voters.

"Most of that money – as much as \$68 million – was spent on salaries for non-teaching employees.

(*San Francisco Chronicle*, 2001.)

d) Other Districts

Although facilities management problems in other districts are not so well-publicized, perhaps because they are in less media saturated outlets, newspaper reports suggest that other districts have similar problems.

(i) Berkeley Unified School District

"According to Stephanie Allen, the previous chair of the [Berkeley Unified School District's Maintenance Oversight Committee] Measure BB was a 'betrayal.' The measure raises roughly \$4 million per year. The money is supposed to be spent exclusively on maintenance. Instead, Allen

said, it is being used to hire expensive supervisors and consultants who oversee small staffs." (Org, Schools Ailing From Poor Maintenance, *Contra Costa Times*, Nov. 2, 2001).

(ii) Del Paso Heights Elementary School District

On June 16, 2002, the Sacramento Bee reported a severe management breakdown in a district just a few miles from the State Capitol.

"Turmoil has descended on a tiny school district serving some of the region's poorest children.

"The Del Paso Heights Elementary School District is without a superintendent, business manager or personnel director. Four of its five principal positions are in limbo. An outside agency has quietly stepped in to handle financial and staffing matters. District business keeps stalling because of deadlocked 2-2 votes by a school board that can't seem to keep its five members.

"And it all is happening in a struggling community where boys and girls desperately need effective public schools."

(Deb Kollars, Tiny district struggling in leadership limbo, *Sacramento Bee*, June 16, 2002.). I am personally familiar with this school district. I have observed that the management breakdown in this district has, not surprisingly, affected its facilities program. As a result of the turmoil described in the news story above, the district is not properly managing and maintaining its school facilities.

2. Poor Management and Lack of Accountability at the Local and Site Level is a Root Cause

These and other reports are consistent with my own personal observations over many years that:

1) there are a number of districts that have significant management problems with their facilities programs;

2) school districts with the worst facility problems often fit a pattern of poorly managed maintenance and construction programs within an overall poor management system; and

3) school districts able to maintain and build adequate schools have strong managers and sensible policies and practices for managing their facilities.

In almost every case I have observed or reviewed, poor management practices are present or contributed to the unusually poor conditions. This statement applies to both the campus level and district level management, and my observations have been confirmed by reports by the State Auditor or reports by other authorities. It must be noted that, in some cases, current administrators have inherited poor conditions from others and are working to fix the problems. In virtually every case where I have observed unusually poor conditions, poor management without accountability led to neglect, which directly led to the observed unusually poor conditions affecting students and staff. It is unusual to find a well-run school with unclean facilities and widespread physical defects or problems. Unfortunately, it is also unusual to find a poorly run, chaotic school with clean facilities and few physical defects or problems.

The districts cited previously provide examples: Oakland, West Contra Costa (Richmond), Compton, Los Angeles Unified, San Francisco, Gilroy, Sacramento City, and others all have endured years of poor management. In a hopeful sign, a number of these districts are establishing solid management and hopes for a brighter future. Sacramento City Unified has turned a corner, West Contra Costa has greatly improved, and Oakland's new superintendent is setting higher standards and showing by example that it can be done, although a tremendous amount of work still needs to be done as a result of decades of district mismanagement and lack of State oversight.

Every school has or will experience some breakdown or problem with its facilities. Well-managed schools in districts with adequate support systems fix the problems and return to normal in a reasonable period of time, and take steps in the interim to protect students and staff while continuing operations. Poorly managed schools do not make needed repairs in a timely manner and allow problems to accumulate until normal use is impossible or student use is impeded to a level that is observably below standards for schools in the state.

3. Other Schools with Similar Demographics are Clean and Well-Run

Some school districts with demographic characteristics similar to districts with pervasive maintenance problems nonetheless have clean schools, adequate numbers of restrooms and drinking fountains available for student use, promptly make repairs, and generally appear as

clean and functional as any modern suburban campus. Anaheim City School District is an example of a school district with many challenges -- extremely overcrowded, yet clean and well-maintained system. The district has many low income, limited English speaking students; its schools are 100% Multi-track Year-Round; many of its schools operate on double sessions in the primary grades to accommodate Class Size Reduction; yet the campuses are neat and efficient. Although crowded, the classrooms are clean and fully operational, and the focus is on learning. One wonders how much better the schools could be without the burdens of crowded campuses and the constant turmoil of multi track room and class rotations. The Sacramento City Unified School District has done a remarkable turnaround in its facilities conditions, even though work remains to be done.

It is my opinion based on observing schools in both well-managed and poorly managed districts that problems are not the fault of the students or the community, as often is claimed, but of the priorities and capability of the system responsible for school maintenance and upkeep.

As discussed later, choices made at the local level to cut budgets for custodial and maintenance departments are often a root cause of school facility problems. With no state standards to require minimum performance, this is an "easy out" for decision makers faced with tough budget decisions, even though it is almost always a short-sighted and harmful decision in the long run.

VII. State Actions Have Allowed Unusually Poor Conditions to Occur and Remain

Despite numerous reports and decades of warnings about unusually poor conditions in the state's public schools, as well as about facilities mismanagement in some school districts, California officials have established only a patchwork system to ensure that every child has the opportunity to attend a safe, functional, and adequate school facility notwithstanding any management or institutional failings of that student's local school district.

Prior to listing examples of the failure of oversight, it is helpful to have a background understanding of the roles played by different government entities in the school facilities system in California.

A. Federal/State/Local Roles and Responsibilities

Multiple levels of government have roles in school facilities. A brief overview follows.

- Federal: The federal government plays a very limited role with respect to school facilities, generally providing funding for major repairs. FEMA (the Federal Emergency Management Agency) will provide funding after a qualifying natural disaster.
- State: The State of California, through agencies, such as the State Allocation Board and the Department of Education's School Facilities Planning Division, provides new construction and modernization funding from state bond programs, provides guarantee of operating fund for school districts, maintains special programs such as Deferred Maintenance, and regulates aspects of facility design and construction.
- County Offices of Education (sometimes identified as County Superintendents of Schools): The County Offices have a limited role with respect to school facilities other than for programs offered by their office (typically schools for special education, regional programs, or other specialized programs).
- Local school districts: Local school districts own and operate schools and may provide charters for charter schools. Currently, the State Department of Education has deemed local districts responsible for operating schools within parameters of Education Code and applicable laws and regulations.
- School site level: Individual schools and school officials implement programs of the local school district.
- Charter schools: Charter schools are quasi-independent organizations providing school services with some or all public funding. They are able to exempt themselves from most requirements of the Education Code.

At the state level, the Department of Education advises local school districts, reviews and approves school sites, reviews and approves plans for school facilities, develops and maintains regulations for school sites and buildings, reviews funding applications, and coordinates with

other agencies. In practice, services are available on a limited basis due to budget and staffing constraints.

The Department of General Services includes two agencies key to this discussion. The Division of the State Architect provides plan review and construction oversight similar to the usual role of a local city or county building department, and preempts exercise of these duties by local officials. The Office of Public School Construction conducts day-to-day administration of new construction and modernization bonds and serves as staff to the State Allocation Board.

Other agencies have a role in developing, modernizing, or maintaining school facilities. The Department of Toxic Substances Control ensures hazardous materials do not contaminate school sites. The Department of Health Services has been assigned to monitor air quality inside portable classrooms, while the California Highway Patrol inspects all school buses. Other state agencies have smaller or highly focused roles (e.g., energy, aeronautics, air quality, and solid waste).

B. Insufficient State Oversight of Existing School Facilities

Virtually all state involvement in school facilities oversight occurs prior to occupancy or during infrequent major repair or modernization projects. The limited role taken by the state has contributed to unusually poor conditions on school campuses that impede students' ability to receive a full and complete education. The state's failures to develop standards, gather information, and enforce what standards do exist have led to school facility conditions that are detrimental to education.

1. State Officials Have Delegated Oversight to Local School Districts Without Monitoring or Adequate Recourse in Event of Local Failings

State officials have stated their understanding that oversight of school conditions is a local rather than a state responsibility. "CDE reviews and approves school sites and facility plans for educational adequacy and child safety. However, enforcement of the building code requirements and other regulations that deal with these topics is the responsibility of the local school board. CDE has no regulatory responsibility in the maintenance of facilities.

Maintenance also is the responsibility of the local school board.” (DOE 00044-45, Brooks letter.)

While cleaning and operations are supervised at the local level, oversight refers to ensuring schools operate in a manner necessary to meet the state's mandates. Lack of oversight at the state level has left students and parents without formal recourse when their local school districts, as agents of the state for providing educational services, fail to perform by maintaining schools in clean and functional condition. Students experiencing unusually poor conditions in their schools are compelled to attend, yet are told by the state that their only recourse is with the local agency even though the local district has shown itself unwilling or unable to remedy the problem.

With the state guaranteeing operating funds for local schools, establishing curriculum requirements, testing requirements, school bus safety requirements, lunch content and food quality standards, teacher qualifications, and on and on, it is my opinion and conclusion that the state cannot ignore its responsibility to set standards for conditions of cleanliness, temperature, ventilation, lighting, minimization of distracting noise, and related issues for school learning spaces and then enforce minimal compliance with the standards.

2. An Inventory of School Conditions Does Not Exist for the State to Assess Overall Conditions in Schools and Effectively Address Needs of Students

The lack of a statewide systematic inventory of schools and school facilities has prevented adequate analysis and development of responses to overcrowded schools or substandard conditions. In its 2000 report *To Build a Better School*, the Little Hoover Commission reported that lack of such data limits the state's ability to target funding to schools with unusually poor conditions:

"The State has invested billions of dollars in K-12 school facilities, yet it does not have an inventory detailing when schools were built, their attributes, or their condition. Without such an inventory, the State is unable to accurately

forecast the demand for new facilities or the costs of maintaining and renovating existing facilities. Similarly, policy-makers do not have the information to know how state funds are allocated. While SB 50¹⁰ streamlined the allocation process, the new formula will undoubtedly favor some districts over others. Policy-makers should be provided the information necessary to ensure that the highest priorities are being met and state funds are fairly distributed."

(Little Hoover Commission, 2000.)

The depositions of Duwayne Brooks, Assistant Superintendent for School Facilities in the California Department of Education, and his superior, Susan Lange, Deputy Superintendent of Finance Technology and Administration, confirmed the lack of any such inventory. In his deposition, Mr. Brooks testified:

We have lobbied the legislature several times, supported the establishment of an automated school facilities inventory system that for a brief time operated in the office of public school construction but was not funded and so it was defunct. And the other reason it was defunct was because the school districts were not mandated to complete the inventory. And typically when we asked the school districts to complete surveys, particularly the largest ones in the state refused to complete the surveys unless they were mandated to do so. But I still advocate and lobby for such a system so that we can know at the state level the condition of all facilities in the state, how old they are, what kind of condition they're in, what they're used for, classroom, recreation, whatever.

(Brooks, 2001, at 335:14-336:4.)

The deposition of Susan Lange confirmed this absence of a statewide inventory.

Such a system would alert state officials to schools operating in excess of guidelines and trigger further review to determine if campuses are overcrowded to the detriment of students or lack sufficient facilities to serve students. Moreover, the existence of an inventory would help create a rational system of school facilities finance. If the state had information as to the age and condition of school buildings, it could ensure that money went to the districts and schools with the greatest need as well as monitoring that needed repairs and upgrades were completed.

¹⁰ The School Facilities Program was enacted by Senate Bill 50 which became Chapter 407, Statutes of 1998 and is found at Ed. Code section 17070.10 *et seq.*

3. An Inspection System Does Not Exist for the State to Monitor Conditions in Schools

The state has accepted programmatic responsibility and a major funding role in building new schools and renovating aging schools. Other state programs provide funding and guidelines for major repairs and maintenance. Yet the state of California lacks an inspection system to monitor conditions in the school facilities in use throughout the state. (Lange, 2001; Brooks, 2001). The state can tell where money has been spent by campus or by major accounting category, but cannot determine whether this has met all needs, some of the needs, or only a small part of the needs at a campus or systemwide for the entire state. There is no inspection program to determine whether the modernized schools are in fact "modern" or if the funds were used to catch-up on longstanding basic maintenance needs.

Other state oversight programs, such as the Coordinated Compliance Review or the II/USP program, do not function as facilities inspection or oversight programs.¹¹ I continue to work with II/USP schools. While facilities are part of the school's self-evaluation review process as well as the outside evaluator's review, I have never seen facilities addressed as a significant part of the changes to be made with II/USP funding. Constraints due to crowding are noted, but the focus is almost exclusively on program and staff development. Examples were cited earlier, and none used II/USP funds to address facility needs. For example, the Stonehurst Elementary School's II/USP action plan identified a number of barriers to student achievement from facilities problems such as crowding and lack of sound separation between classrooms (and pseudo-classrooms, such as classes held on the stage), but none of these is addressed by the II/USP budget. (DOE 46955-47049.)

Coordinated Compliance Reviews similarly look at the facilities used by the specific categorical programs being reviewed, but again the focus is on the program rather than the facilities. For example, I have participated in discussions with reviewers and district staff about

¹¹ I understand that these programs are described in great detail in other expert reports by Professors Heinrich Mintrop and Jeannie Oakes.

special education classes being assigned to portables rather than permanent rooms, and occasionally to confirm district standards for pull-out rooms, but never have I seen a compliance review that recommended or required upgraded or expanded school facilities. The deposition of Eleanor Clark-Thomas, Manager of the Coordinated Compliance Review Unit at CDE, confirmed that facility cleanliness, temperature, and related standards are not a required part of their review process. (Clark-Thomas deposition, 183-184.)

C. The State Has Failed To Develop Standards

Even with knowledge of deficient conditions -- sometimes seriously deficient conditions -- existing in some of the state's schools, and even after a more-than-ten-year-old legislative mandate that the state develop school facility standards, the state has not adopted sufficient standards for facility operations. Legislation in 1989 required the Division of the State Architect to develop statewide standards for school facility maintenance and cleanliness (Calif. Health & Safety Code section 16500). Nonetheless, in March 2002, the Finance and Facilities Working Group of the Joint Committee to Develop a Master Plan for Education perceives the problem to be sufficiently significant to warrant a recommendation that the state "Establish clear, concise, and workable standards that are characteristic of facilities that provide a high quality/high performance teaching and learning environment."

The Education Code and state regulation contains some standards regarding school buildings. However, there are two major problems with these standards. First, the ones that apply to current buildings are limited in scope and inadequate to provide each student in California's public schools with an adequate learning environment. These statutes and regulations set forth general requirements, but do not include many aspects of classrooms and schools that are necessary to a properly operating school such as operability of restrooms, temperature, ventilation, and so forth. Second, the state has fairly detailed regulations that apply

to new school construction. These regulations have no mandatory effect on schools after they are built.¹²

1. Selected standards from the Education Code

Selected sections that apply to schools after they have been built are listed below.

- Education Code section 17263 and 17267: plans and specifications for new projects must be submitted to the state (DSA) for approval.
- Education Code section 17573: " The governing board of every school district shall provide a warm, healthful place in which children who bring their own lunches to school may eat the lunches."
- Education Code section 17576: governing boards of school districts shall provide flush toilets.
- Education Code section 32020: school entirely enclosed by a fence shall have gates for emergency vehicles.
- Education Code section 35293: schools within a school district shall have equal rights and privileges.
- Education Code section 35292: the governing board or its Superintendent shall visit each school and " . . . examine carefully into the management, needs, and conditions of the schools."
- Education Code section 35294: each school shall have a Comprehensive School Safety Plan.

2. Guidelines and Standards Exist for Design, but Not Operation of Schools

Title 5 has guidelines and standards by which plans for new schools are evaluated. (Title 5, Calif. Code of Regulations, 14010 *et seq.*) Yet there are no state standards for schools once

¹² While these regulations are far more comprehensive than the standards that apply to existing schools, they are still deficient in some areas. Most notably, nothing in the new construction regulations requires that schools be built in such a way that classrooms can be maintained within a range of defined minimum and maximum temperatures.

they have been built in the areas of cleanliness, temperature, illumination, noise, playground area, and so forth.

Clear standards have been adopted by the state for many other aspects of school and district operations.

- Accounting codes are prescribed and standardized.
- Buses are inspected by the California Highway Patrol to ensure objectivity and safety.
- School lunches must meet strict state and federal standards.
- Child care centers must meet specifications.
- Tests must be given according to statewide standards and practices.

There is no reason why, especially in light of the 1989 Legislative mandate, that the state cannot create a set of binding standards for conditions in the state's public schools.

3. Without Benchmark Standards, Local Districts Are More Likely to Allow Poor Conditions in Schools

Without objective standards, the state is unable to advise local school district on appropriate actions and budgetary decisions regarding adequate levels of service from maintenance and custodial operations. As the Finance and Facilities Working Group of the Joint Committee to Develop a Master Plan for Education – K-12, recently wrote: "Common standards will establish an expectation of the conditions and quality of school facilities throughout the state." (Master Plan Working Group, 2002.)

a) Standards Ensure Adequate Performance

The state is aware of the wide range of school districts in the state. Each district must identify and adopt its own maintenance policies, staffing ratios, budget formulas, and cleaning procedures. Guidelines are available from professional organizations, yet each must be adopted on a district-by-district basis if at all. Lack of standards from the state level impedes school districts from evaluating performance by staff and effectiveness of its internal operations.

I vividly recall a favorite phrase of one school administrator "If it ain't monitored, it's optional."

He was speaking of instructional matters, but the point applies to cleanliness and every other aspect we are discussing here. If there are standards, performance can be monitored and it "ain't" optional. Without standards, performance monitoring becomes almost impossible.

Finally, in my experience, the affected students are not likely to care who develops the standard, only that their classrooms are clean and comfortable and the restrooms are available and working.

b) Standards Ensure that Services are Provided

Based on my experiences, I have observed school administrators choosing to eliminate or reduce those services not mandated by state law, specific programs, or board policies (including but not limited to home-to-school transportation, art, music, physical education, and others). Even when adverse consequences may be predicted for students and the educational process, that which is not required or monitored is likely to be treated as optional when budget choices must be made. A recent article in the *Sacramento Bee* noted that districts cut maintenance and custodial services first when facing the current state budget deficit: "Custodians would clean classrooms every other day. Some teacher's-aide positions would be eliminated. An after-school tutoring program would be suspended. These would be some of the effects of spending cuts Natomas Unified School District trustees will consider tonight to deal with a projected \$2.4 million budget deficit." (Louey, A Projected \$2.4 Million Budget Deficit May Reduce Tutoring and Cleaning, *Sacramento Bee*, February 20, 2002.) Similarly, the Los Angeles Times reported that budget cuts this year will require "limiting maintenance of campuses" and that "[f]unds to restore gardening and custodian positions will not be available." (Helfand, Trustees Find Cuts to Budget Difficult, *Los Angeles Times*, May 1, 2002.) Cuts in maintenance and custodial services are widespread this year as school districts try to balance budgets within a sharply dimmer state financial picture.

c) Standards Provide A Basis for a Rational System of School Finance

The establishment of basic requirements for all school district facilities triggers finance and budgetary requirements to ensure that districts have sufficient funds to meet the required

standards. The Finance and Facilities Working Group of the Joint Legislative Committee to Develop a Master Plan have identified this link as important to achieving quality facilities for all students. "The linkage of standards to a reliable source of annual state funding is direct and logical: The state establishes the expectations and guarantees the resources to meet them." (Master Plan Working Group, 2002.)

4. The State has no enforcement mechanism to ensure that California public schools meet basic minimums

The state has no ongoing mechanism to ensure that California public schools meet basic minimum conditions for students or staff. No other agency - state or local - has been given responsibility or authority to monitor and enforce conditions in schools. Schools have immunity from much local inspection as they are deemed agents (or "islands") of the state. (See Government Code section 53094.). The only exceptions are local fire inspectors, county health departments (in my experience this is in food service areas only), and some local law enforcement departments.

As an example of the lack of state enforcement authority, Duwayne Brooks testified that after he became aware of serious conditions in the Compton Unified School District he tried to address the problem and have the conditions fixed, but despite his efforts he was unable to do so. (Brooks, 2001.)¹³ Similarly, Superintendent Eastin has taken the position that she does not have the power to remedy facilities conditions in schools. "If you have high-performing, well-heeled schools that are modern and low-performing, down-in-the-heels schools that are old, this superintendent can't do anything about that,' Eastin said. 'I can't go in and order you to fix the bathrooms and paint the walls.'" (Pardington, *Contra Costa Times*, Jan. 7, 2002).

¹³ As I explained above, the lack of an inspection system and lack of binding standards against which to evaluate whether a school's facilities are, or are not acceptable, are major missing elements of a workable enforcement system. However, even in instances, such as Duwayne Brooks discussed, where the State was aware of seriously deficient facilities conditions, it lacked the enforcement capability to remedy the problem.

a) The State Lacks Formal Procedure for Complaints About Conditions in Schools

The state Department of Education, Division of the State Architect, and other state agencies do not have established procedures for responding to complaints about physical conditions in schools. Some complaints are handled on an ad hoc basis. Moreover, the state often refers complaints back to the local district because of the state's position that it isn't responsible for maintenance of school facilities. (Lange, 2001.) Complaints about civil rights, special education program, categorically funded programs, financial concerns, and so forth are promptly investigated by the state. There is no formal process for tracking, investigating, or monitoring complaints on cleanliness or substandard conditions.

b) Lack of Enforcement for Requirements of Plans Approved by CDE and DSA

The Education Code requires that plans for new schools be reviewed and approved by the state Department of Education. State bond funds are available only for plans approved by the Department of Education. (Ed. Code 17070.50, 17251, 17260, 5 CCR 14031, 14032.) Yet the state has no formal monitoring or enforcement program to ensure that the schools once built are operated according to the approved plans. For example, the state checks whether plans include the number of restrooms required by the Plumbing Code for the design population of the school (based on expected occupancy of the number of teaching spaces on the approved plans). The DSA inspection process ensures that construction follows what is on the plans. (Ed Code 17331.)

However, there is no enforcement mechanism to ensure that at least those minimum numbers of restrooms are unlocked and available to students during school hours. Other areas, such as number of drinking fountains, size and types of playground areas, library space, and so forth are required to be checked prior to design, but are not required to be monitored for availability after occupancy.

D. Lack Of Oversight Has Contributed To Conditions That Impede Students' Ability To Receive Education

Explained below are specific illustrations in the area of the placement of portable buildings and campus overcrowding of how lack of action by the state has affected conditions on school campuses.

1. Number of Portable Classrooms on a Campus

The state does not have binding standards as to the number of portables that may be placed on a campus so that some threshold school capacity is not exceeded. As a result, the state has no process to inspect to determine whether a threshold is being exceeded or to remedy the situation where the capacity is exceeded. To cite one example, the Oakland Unified School District Master Plan reported that Cox Elementary School in east Oakland has 27 permanent classrooms on a 4.66 acre site, even though state guidelines suggest that 4.66 acres are sufficient for only about ten classrooms - using a benchmark of 55 students per acre. (That same Master Plan identified a district goal that no school should have more than 150 students per acre under any circumstances, including multi-story construction.) The District had by 1998 added 24 additional portable classrooms to this small elementary school campus, approximately the capacity of a 600 student school, so that actual enrollment reached 1,273 students on 4.66 acres by the 1999-2000 school year.¹⁴ Each of the 24 portable classrooms is subject to state control and required state approval to place on the site, yet somehow this already undersized campus grew to house about five times as many students as is ordinarily desired. Even adjusting for multi-track use, the campus is hugely overcrowded. (Education Code section 17267.) As enrollment grew, play space for students shrank. Cafeteria space, library space, and every other feature of the school became overcrowded. On these portables, the welding was inspected, the fire alarms were inspected, but the wisdom of placing more and more buildings on an already small urban campus was not inspected, and state authorities did not require the local school

¹⁴ This is an example of where a lack of binding standards has allowed a school district to exceed what many -- including me -- perceive as reasonable conditions on a school site.

district to provide any justification of how the existing students or the new students would not be harmed by the proposed facility changes. It is important to note that the state was not a passive observer in this process. By obtaining state approval for the additional portable classrooms, and reporting these rooms to the state funding program, the state received multiple notifications and participated by issuing approvals.

2. The State Has Failed to Enforce Statutes Requiring DSA Approval of Portable Classrooms

The state has failed to curtail use of non-approved portable classrooms. On more than one occasion the Legislature has acted to extend waivers of the Field Act because so many non-approved portable classrooms remained in use as classrooms. (See Education Code section 17372 and related sections.) Some of these non-approved rooms may be nice, but they still fail to meet the minimum structural safety requirements for every general purpose school building in the state. By not seeking DSA approval, it is unknown whether the new classrooms met fire safety and handicapped access requirements. Had an effective oversight system been in place, local school districts likely would not have chosen the expedient path of less costly and faster delivery with non-approved buildings because they would have known the breach of law would have been detected and corrections required. ("If it ain't monitored . . .") To this day there is no comprehensive count of the number of students and certificated staff using school facilities that do not meet structural codes for all school buildings. (Educ. Code 17267, 17284, 17291, 17292.)

3. State Programs and Procedures Have Contributed to Substandard Conditions in Schools Including Overcrowding and Lack of Playground Space

Approved as well as unapproved buildings can cause overcrowding and poor conditions on school campuses. The State of California has participated in causing crowding of playground space, open space, libraries, labs, cafeterias, and other spaces by allowing additional portable classrooms to be placed on existing campuses after review only for structural, fire and life safety, and accessibility. Numbers of these classrooms were leased from the state under the Emergency Classroom Program administered by OPSC and the State Allocation Board. Others were

acquired using the per-classroom grants in the Class Size Reduction Program administered by the Department of Education and OPSC. (Ed. Code 17085.)

4. CDE Plan Approval Procedures Do Not Apply to Incrementally Added Portables

The state reviews plans for additional portable classrooms on existing campuses to determine that structural safety and related standards are met, but not whether the expanded campus will continue to meet Title 5 regulations for number of restrooms, playground area, cafeteria space, etc. that apply to newly built campuses.

CDE review is recommended for all projects and is required on projects with state matching funds. (Ed Code 17263, 17072.30.) CDE review is not required for portables added with district funds. (Ed Code 17268.) In my opinion, the source of funds should not determine whether trained specialists should review plans to determine whether students may be affected by potential overcrowding due to an expansion project.

E. An Effective System of State Oversight Is Feasible

A more comprehensive and vigorous system of state oversight with respect to facility conditions in schools is certainly feasible. Many aspects of a school district's operations are monitored or audited by the state. Enrollment and attendance, testing, languages spoken by students, financial data, buses, for example, are all monitored by established procedures and standards, and often have state level staff assigned to the oversight function.

It appears a message has been sent that issues such as cleanliness and numbers of restrooms per student are not important because they are not monitored.

1. It Is Feasible to Develop Standards

The state has developed standards for numerous areas of instruction, operation, and financial reporting. These standards and corresponding monitoring programs show that it is feasible to implement a statewide system to oversee actions by local districts. As just one example, precise, uniform, strictly enforced standards exist for any parcel of land being considered for use as a school site anywhere in the state.

Facility standards may also feasibly be developed. For example, the state Department of Education created the "Facilities Assessment Profile" tool which has been available since 1978. This Profile was available upon request and provided recommendations to school districts, but did not make any requirements. Results of assessments made using the Profile were not reported or monitored by the state. (see Calif. Department of Education web site, Facilities page, at www.cde.ca.gov.)

The state has also adopted specific standards for non-school facilities such as restaurants, barbershops and beauty salons, nursing homes, state-funded preschools, and others. These provide ready benchmarks for minimum standards for schools: school cafeterias should be as clean as a fast food outlet or a nursing home, standards for state preschools can easily be adapted to a primary grade classroom. These standards apply throughout the state and demonstrate that a system need not be oppressive or immense at the state level to cover the entire state.

2. It Is Feasible to Develop Inspection/Monitoring Programs

Workable school facility inspection and monitoring models already exist. For example, other states are able to operate statewide school inspection programs based on state standards. For example, the Maryland Department of Education investigates all complaints received about conditions in any of the state's public schools, and targets an inspection of every school every eight years. (Abend, Maryland State Dept. of Education, 2001.) In smaller districts, every school will be inspected about every five years. In larger districts, it takes longer for every school in the district to be inspected. (*Id.*) If a school receives a grade of poor when it is inspected, the state inspector will inspect the school again within the year to determine whether the problems that caused the school poor grade have been fixed.

Some may think – incorrectly – that the task of school inspections may be overwhelming or the cost too great for a large state like California, which has about 8,000 schools. Inspecting every school every four years would mean that about 2,000 schools must be inspected per year. (There is no statistical reason for every four years; this is simply twice as frequently as Maryland's program and assures that every high school will be inspected once in the typical student's four year tenure.) I assume state workers have 200 workdays per year after setting

aside days for staff meetings, vacations, holiday time, sick days, conferences, and whatever else. Half of these could be in the field and half in the office doing paperwork, or 100 inspection days out in the field per worker per year. If each worker inspected two schools in a day he or she would check 200 schools per year. Therefore, it would take ten people to inspect every school in California every four years. Of course, indications of problems at particular schools would should prompt more frequent and unannounced inspections. Two schools per day is pretty slow, as some of these schools are close together, but this is a rough estimate. This allows time to inspect reported problems or complaints as they are received. Even if each worker cost the state \$100,000 per year for salary, benefits, a state car, travel, gasoline, hotels and meals, paper, desks, computers, phones, and everything else, the total cost of this program is about \$1 million per year to inspect every school in the state every four years. This amount is insignificant when compared with school bond measures in the billions of dollars. The point is, a centralized, standards-based inspection system for California is not only feasible, but the cost is minimal when compared to the approximately \$40 billion spent on all K-12 education costs each year by the state.

Within California, FCMAT has developed a model of school facilities assessment and inspection. FCMAT's model involves reviews of district documents and school site logs, measuring compliance with the standards in a facilities recovery plan, inspecting school sites, conducting community meetings, reviewing how local bonds or other borrowing instruments have been issued and expended, and meetings with school district personnel. (Henry, 2001.) I have attached to this report a form FCMAT uses that lists criteria assessment for the physical plant. Fifteen items are assessed and include the status of restrooms; operability, safety, and clarity of view through windows; electrical, heating, and ventilation system checks; and condition of playground equipment, landscaping, litter, et cetera.

Similarly, in the course of Dr. Robert McCord's facilities review of the San Francisco Unified School District, Dr. McCord performed personal site visits and personal review of reports and records obtained from the SFUSD Facilities Department. His appraisal components included a Building Assessment Score composed of several rubrics including: School Site; Structural/Mechanical; Building Safety and Security; Plant Maintainability; Educational Adequacy; Environment for Education. Dr. McCord also focused on building cleanliness and other matters related to the facility as actually maintained by the district and on unmet facilities needs in order to evaluate the degree to which the district has invested in the schools in recent years compared to the district's own assessment of needs. (McCord, 2001.)

As mentioned above, when I review and assess school districts, I visit the schools to verify room counts and facilities available or to validate information provided by district staff and to make my own assessment of the school facility conditions. On of my school visits includes review of the school's exterior, interior courtyards, playgrounds, cafeteria/multipurpose room, one or more student restrooms, typical classrooms, special facilities, and other aspects of the school.

I see no reason why California could not apply such a model to facilities reviews statewide.

3. State Currently Reviews and Approves All School Construction Plans

New schools are designed by professional architects and engineers hired by the local school district, but all plans must be checked by the Division of the State Architect. Plans are checked for structural safety, fire and life safety, and access for persons with handicaps. The state requires and must approve a "resident" deputy state inspector on all school construction projects to certify that the buildings are built according to the DSA approved plans. (See Education Code sections 17323(h) and 17309.) Yet no formal process exists to determine whether conditions approved on plans remain available to students once the school has been occupied. For example, no one at the state level takes the responsibility to ensure that the

restrooms required to be designed into the project are unlocked during the school day, or the drinking fountains are cleaned, or that the furnace is functioning on cold days.

4. The State Could Check for Compliance on Additions

The California Department of Education has authority to review both preliminary and final plans for state-funded new schools and additions to schools to monitor compliance with adopted state regulations for school facilities. (As I explained above, when a district is adding portable classrooms at a school, the DSA generally checks the proposed buildings for structural safety, but there is no binding standard or process to prevent a district's choice to add far more portables than a campus will comfortably accept). This power exists when requested by the local school district. Alternately, the state will accept a "self-certification" resolution from the school district attesting that all state requirements have been met. However, when a district builds a school or addition without state funds, no CDE approval is required. Requiring CDE review of changes to the approved plans whenever a new classroom or building is added to a campus, regardless of the source of the funding, will extend protection to students.

5. State Recently Inspected Many of Campuses in State, But Only for Fiscal Control Reasons

Every district applying for funds under the new School Facilities Program (SFP) was visited by a representative of the state (OPSC) to verify numbers and types of existing classroom teaching stations, which determines eligibility for state new construction funds. (These visits were part of the School Facilities Program implementation process under SB 50 and Proposition 1-A.) Summaries or the actual forms for these "property checks" are found in each district's Master File at OPSC for each district in the School Facilities Program. What this demonstrates is that the state can visit a large number of school campuses in a short period of time to verify conditions when the focus and standards are clear.

6. Assistance to Local School Districts Ensures Access for all Areas of the State

When I began work with the state building programs in 1975, our district was visited several times each year by a designated representative from the State Department of Education. Our representative, Dr. Harry Schwilke, would check with us and all other districts in his

territory to determine if any assistance was needed, and to remind districts to review their facility needs, and show districts needing help how to apply for available state funds. He would provide technical assistance as needed, answer questions, assist with interviewing architects if needed, and help school district staff fill in state forms. This proactive service helped ensure that no district was left out. Having an extra set of eyes helped ensure minimum standards. Funding cutbacks at the state level and other factors have relegated this level of service to the past; yet it remains feasible depending on budget decisions. What could be done in the days before word processors, spreadsheets, cell phones, fax machines, the internet, and so forth can still be done today.

VIII. Funding/Allocation Models

The state has provided substantial funds for construction and modernization of school facilities. The billions spent have improved conditions for many, many students. Nonetheless, in my opinion, the state's funding program has been inadequate in three respects:

1. No system was in place to ensure that schools with severe facility needs participated in the bond programs.
2. Incentives and program requirements have led to unanticipated consequences, including overcrowding due to multitrack calendar requirements, and deferral of needed repairs to meet state funding opportunities.
3. Inconsistent and insufficient state funding has led to inefficient facility construction and renovation programs by local school districts, which have exacerbated existing problems.

A. Background

Historically, local communities in California paid for their own school facilities by issuing school bonds repaid by property taxes, annual tax levies, or other methods. These methods continue today in most areas of the nation. During the rapid growth in California following World War II, the traditional system could not keep up with growth as families and school age children arrived faster than the tax base to support bonds. The state responded with

the School Building Aid Laws of 1949 and 1952, (Ed Code 16000) among others, which loaned state dollars to districts unable to issue local bonds so that all students would have access to needed schools. When the community's tax base grew, incrementally higher taxes than needed to repay only the bonds were levied each year until the state loan was repaid; unpaid balances were forgiven after twenty years.

This system, with various changes, continued until the mid 1970s when rising property taxes and assessments saw many local bond issues fail at the polls. The state responded with the Lease-Purchase program, which essentially transferred the financial responsibility for new and modernized schools to the state. (Ed Code 17000 *et seq.*) In 1978, Proposition 13 barred property taxes for bonds; this ability was restored by Proposition 46 in June, 1986. Effective January 1987 the state building program was revised to require a local contribution of approximately twenty-five percent on new construction projects.

The next big change occurred in 1998 when Proposition 1A and Senate Bill 50 implemented the School Facilities Program, which continues today. (Ed Code 17070.10.) A keystone of this program is shared financial responsibility for new and modernized schools between the state and local school districts, and included major changes to the process of levying school facility impact fees on new housing.

A final watershed event was passage of Proposition 39 in November 2000, which allows school bonds to pass with fifty-five percent voter approval. This has made more dollars available to local school districts to pay for their own growth needs and modernization projects, or to match state funds when state funds are available. (See "The 55% Solution: Local School Bonds Winning Easy Approval" in the June 2002 edition of *California Planning & Development Report*.)

A major bond package has recently been approved by the Legislature and signed by the Governor and will appear on the November 2002 and again in 2004. This bond program generally extends the current School Facilities Program. One important difference, however, is the new "Critically Overcrowded Schools" program that has been designed to provide funding to areas, like urban centers, where land acquisition is time consuming and difficult. The core of the

Critically Overcrowded Schools program is a district's ability to apply for and "reserve" state matching funds without first having to acquire or even identify a specific site and have approved building plans (which generally require a specific site before design can begin). Critically Overcrowded Schools funding will reduce crowding in many areas, but does nothing for cleanliness and conditions in existing, older schools. Similarly, as described later in this report, other aspects of the 1998 bond program that favored new schools in new neighborhoods continue in the proposed 2002 bond program.

B. Overview of Funding Types

New Construction projects are funded by state bond funds, local bond funds, impact fees on construction projects ("developer fees"¹⁵), surplus school properties, and other school funds. This program requires a 50% local match from the school district that may be reduced if financial or other hardship tests are met. (Education Code section 17075.10.) Eligibility for New Construction funding is based on the number of "unhoused" students. Unhoused students are the number of projected future students less existing adequate capacity. (Education Code section 17071.75.) State funding is based on a set "grant" amount per unhoused student plus a factor for land and site improvement costs. (Education Code section 17072.10.) State statutes and regulations do not treat all students equally, as some portable classrooms are excluded from consideration as existing capacity, some students on multitrack are counted as adequately housed even when they must share their desks and rooms on a rotating basis with students on other tracks, and projected enrollment from unbuilt homes on approved tract maps count the same as real students currently enrolled. (Education Code section 17071.75(a) and Regulation 1859.429(b).) The program was designed in large part to meet growth needs for new schools in rapidly growing communities.

Modernization projects are funded by state bond funds, local bond funds, and other school funds. A local 20% match is required that also may be reduced or waived if certain

¹⁵ See Education Code section 17620 *et seq.* and Government Code section 65995 *et seq.*

criteria are met. Modernization is the term used for major renovation, where repairs needed every 25 years are addressed.¹⁶ (See Education Code section 17073.15.)

Deferred Maintenance projects are funded by a combination of state and local dollars, with the state generally matching local deposits into a restricted maintenance and repair account for periodic major maintenance tasks (for example, asphalt repaving rather than patching). Eligible projects are those needed every five to fifteen years rather than more frequent repairs that fall under normal maintenance expectations. (See Education Code section 17582.)

Other special purpose state funds have in the past been provided to address specific needs such as roof replacement, air conditioning for schools changing to year round, and so forth. At present, there are almost no funds left in any of these programs.

Local school budgets are meant to provide funds for ongoing operation and maintenance of the schools. This is not always the case, as often maintenance, custodial, grounds keeping, and similar functions are the first cut when budget shortfalls are faced. (See references elsewhere in this paper.) The School Facilities Program requires three percent of a recipient district's budget to be committed to maintenance and repairs. (Ed Code 17070.75, 17070.77.) This requirement was added specifically to reduce the need for major modernization projects in the future. (Statements of Senator Leroy Greene, retired, primary author of SB 50.)

Other funding sources are sometimes used in special situations. Federal military impact funds, redevelopment funds, grants, bequests, and other sources are used for school facilities, but represent only a small part of the overall funding system and almost always include case-by-case special restrictions.

C. Allocation Models

While the state recently has provided substantial funding for school construction, renovation and repairs, funds have not been targeted to schools with the greatest need, have not

¹⁶ For portable classrooms, modernization repairs are addressed on a 20-year timetable instead of the 25-year timetable for other classrooms. The previous program used a criteria of 30 years for a school building.

ensured that sufficient monies are available to schools with unusually poor conditions, and have not monitored participation by schools and school districts.

1. Not enough

Proposition 1-A provided more than \$2.1 billion for school modernization projects. However, the entire 2000 allocation of \$1.3 billion was apportioned in one vote at the July 2000 meeting of the State Allocation Board. This happened because projects were queued up waiting for funds after the 1998 round of funding ran out. Many projects were left waiting for the next statewide school bond, which could occur no sooner than November 2002. As of April 2002 there are more than \$1.4 billion in modernization projects approved but unfunded at the state, and another \$650 million being reviewed and processed by state staff. The statewide bond proposed for November 2002 will address many of these applications. The backlog of projects designed, approved and waiting for funding has exceed \$2 billion, about the same amount as was funded by both phases of Proposition 1A. (see OPSC web site at www.opsc.dgs.ca.gov.)

Similarly, there was not enough money in Proposition 1A for New Construction. Currently there are about \$3 billion in approved unfunded and "workload" projects before the State Allocation Board, and about \$450 remaining from the 1998 bond. While Proposition 1-A of 1998 was large, clearly it did not meet all the needs around the state.

2. Grant Amounts are Not Adequate

While school officials appreciate the simplicity of the per-pupil grant amounts that drive the funding formulas in the School Facilities Program (from SB 50 and Proposition 1-A), most if not all find the per-pupil grant amounts to be too low to build schools to modern and community standards. A common response is to find the state grant paying about one-third rather than fifty percent of the total cost. District with financial assets supplement state grants with other funds. Districts without other funding must cut back space, quality, or some other item to fit within the budget. Hardship-eligible districts¹⁷, who have passed a rigorous audit of their financial

¹⁷ See Education Code section 17075.15 and SAB Regulation 2 CCR 1859.81.

statements by the state to establish their poverty, must stay within the state grant allowance, further separating the "haves" from the "have nots".¹⁸ As discussed elsewhere in this report, flat per-pupil grant amounts for Modernization projects fail to recognize the very different starting points for recipient schools. A 25 year old school in good condition gets the same funding as a 50 year old school in poor condition. (This is proposed to be addressed to an as-yet undetermined extent in the 2002 bond.)

3. Funding is Unpredictable

This pattern of state funding with frequent shortages is well documented in reports by the State Library's California Research Bureau and the Legislative Analyst's Office. "It is clear that throughout this history [of school facilities financing] that there was never enough state money available to school districts for facility construction or repair." (California Research Bureau, 1999.) By the time the next statewide school bond is on the ballot in November 2002, some projects will have spent more than two years waiting in line for funding, even after spending six months or more in plan review and processing at the state. During this time, school districts often are reluctant to undertake major repairs, as the repairs overlap with modernization work already designed and approved.

"Although districts typically incur capital outlay expenses every year - refurbishing or constructing facilities, acquiring land, or developing architectural plans - the state offers facility aid on an unpredictable basis. . . . State bonds are usually fully depleted before additional funds are authorized by voters, leaving hills and valleys of revenue availability. This unpredictability in state funding impairs districts' capacity to plan, build schools, and raise supplemental local funds." (Legislative Analyst, 2001.)

¹⁸ Just recently an article from the a Lodi newspaper described how the district was planning to build new classrooms without running water, tackable wall surfaces or cabinets, because the amount of money available to the district in its hardship grant would not allow for these features. At the last minute, the district was able to pass a local bond to enable to include these features in the classroom. Geisel, Bare-bones Classrooms Dismay Teacher, Lodi News-Sentinel, Aug. 9, 2002.

At the real world level, students today are sitting in classrooms that need major repairs, but the repairs are on hold because they don't make sense if the building will be modernized and the problem replaced whenever the state again has funding. A small, but illustrative, example occurred at my son's elementary school in Ventura. A foot-square section of wall plaster collapsed in one of the boys' restrooms. After several calls and complaints, the District nailed a piece of unpainted plywood over the hole in the wall, saying the wall would be repaired and repainted the next summer during modernization. This tacky, stop-gap measure would not have satisfied basic building code requirements for a new home, and remained in place for eight months until school got out (it was fixed this past summer). This type of inadequate measure, which resulted from the cyclical nature of funding for capital repairs occurred in a good school with a strong principal and lots of active parents. This paper is about the weaker schools with not-so-strong administrators without parents who will demand fixes, even if less than desirable.

As the LAO recently wrote:

[w]hen districts submit eligible projects to the state after a bond measure's funds are depleted, districts may wait years until additional state funds are authorized by voters. . . . Confronted with these gaps in state funding for approved projects, some districts delay construction of needed school improvements.

LAO, A New Blueprint for California School Facility Finance, at 4.

4. Spending Decisions Made at the Local Level with Little State Oversight

The state makes available various forms of funding for facility improvement and maintenance. What is missing is a systematic review process to ensure that these state dollars are meeting the needs of the students. For the millions spent, there are no performance requirements other than the accounting requirement that funds be spent on the major categories of work listed in a district's plans. Even with the state providing between 50% and 100% of the funds, no performance standards other than general guidelines exist. By performance standards, I refer to requiring that roofs be replaced on a specified interval or certified that no replacement is needed. Schools should be painted on a schedule or certified that they don't need paint or were recently painted with other funds. Carpeting should be replaced or certified that it is in good

shape. The goal is to maintain and preserve facilities by preventing major problems rather than shifting money from maintenance crisis to maintenance crisis.

5. State's Facility Funding Model Doesn't Recognize the Magnitude of Existing Deficiencies

It is this situation that has led the Financing and Facilities Working Group of the Joint Legislative Committee to Develop a Master Plan for Education and the LAO to recommend a total overhaul of the way California's finances school renovation and construction. Their recommendations generally provide for a guaranteed annual per-student allocation of funds for facility needs, which may be used by the local school district as needed. Funds may be saved up and used for a big project, or a project may be started and the loan repaid by future annual receipts.

I share concerns of the Legislative Analyst that not all schools in the state are at the same starting point. If we were only concerned with maintaining uncrowded, adequate schools the plan would work well. But not all schools in California are in good condition. If School "A" has an enormous backlog of facility needs and School "B" does not, then School "A" will always be in worse condition than the other school. Further, funding is provided at a constant level for projects, with the result that schools with many physical needs get the same amount per pupil as schools with only minor needs.

In my experience, some schools of eligible age are in fairly good condition and use modernization money to improve conditions, upgrade appearance and make other changes. Other schools have failing infrastructure and end up with most of the costs buried in new sewer lines, new electrical transformers and wiring, replacing rotted floorboards, and other features that do not improve the school's functionality and overall conditions to a level comparable to newer or well-maintained schools, even though individual components (such as reliable electricity supplies and unclogged sewer lines) are better. This situation is inherent in a system with equal funding irrespective of need, but results in the schools in poorest condition staying in poor condition, and the schools in better condition able to improve. I do not wish to demean the Modernization program, but the practical reality is some schools spend all their money on

meeting handicap access requirements (from the ADA or Americans with Disabilities Act), basic utility needs, or painting buildings that haven't seen fresh paint in a generation. First, level the playing field, then the Master Plan Working Group's and the LAO's proposed facilities financing system has merit.

Again, the proposed November 2002 statewide bond, enacted by AB 16 (Hertzberg) includes a supplemental apportionment amount for modernizing schools more than fifty years old. (See section 17074.26, Chapter 33, Statutes of 2002.)

6. Existing Overcrowded Students Don't have a Priority

Under the current School Facilities Program (as well as the predecessor Lease-Purchase Program) eligibility for new school construction dollars is not prioritized between existing students in overcrowded schools and projected enrollment from unbuilt homes on approved tentative tract maps. (See Education Code section 17071.75(a).) While this represents a legislative compromise to pass a statewide bond, the practical effect is that existing students in existing overcrowded schools have to compete for funding with students expected to live in new homes that haven't been built yet.

7. State has no system to ensure that all students benefit from state bond funds; applications are left to the discretion (and ability) of their local school district

Both Modernization and New Construction funding under the School Facilities Program are application-driven systems. The state has no monitoring program to ensure that all students of the state benefit from the state bond funds. It should be noted that the state has a large outreach effort through mailings, conference presentations, meetings and workshops, its web sites, and other forums to provide information about their programs.

The failure of districts that need funds to apply for them is not a hypothetical problem. For example, reports from FCMAT and the State Auditor confirmed that for years the Oakland Unified School District missed out on obtaining large sums of state funds for new construction and modernization – funds for which it was eligible – by not applying for them. As reported by FCMAT:

A report by the California Office of the Auditor General in January 1990 states that the Oakland Unified School District had not taken advantage of all available sources of funds for improving school facilities. An analysis of the funding history shows that the district applied for new construction funds for only three sites between 1981-1991. Two of the requests for funding were rescinded and one was unfunded. The data also shows that the district did not apply for any funding under the modernization program during this period. (FCMAT 3452.)¹⁹

The State Auditor concluded that consequence for the district, in terms of dollars lost and possible harm to students, of its failure to apply for funds was severe:

"Further, funds are available to the district from the State to improve or construct school buildings. However, the district has not applied to the State for \$12.6 million for new construction, \$42.8 million for facilities modernization, and \$6.3 million for asbestos abatement, all of which the district should be eligible to receive. As a result, the district's students and teachers may sometimes unnecessarily housed in overcrowded, outdated, and potentially hazardous facilities." (Calif. State Auditor, 1990).

Some years ago I was one of a number of consultants and specialists asked by the Los Angeles County Office of Education to assist Compton Unified School District with state applications for new construction and modernization projects. At that time the District was eligible for funding at a dozen or more schools. Our work was entirely pro bono. Ultimately no applications were filed from that effort due to conflicts over architect hiring and the district's inability to set priorities for projects. A visit to one of the schools during this period showed overwhelming evidence of need, which made the district's failure to receive state funding quite disappointing.²⁰

Any school district can choose to stay out of the Modernization program by choice or administrative oversight. Other than informal followup by state staff, there is no systematic monitoring of district participation in state funding programs. By not monitoring which districts

¹⁹ As of 1990, schools that were 30 years or older were eligible for modernization funds if they had not already received state funds for modernization. It appears, based on the Oakland Unified School District's Long Range Facilities Master Plan, that as of 1991, the district had over 40 schools that were at least 30 years old that had not yet been modernized. (DT-OA 03237-38). (Ed Code 17021.3(c).)

²⁰ Since then, the district has applied for state funding and appears to have turned a corner toward improving its facilities

are participating in the Modernization and New Construction programs the state cannot ensure that any groups of students are left out by error, oversight, or design.

A strong and ongoing state program is needed to supplement local efforts, including school bonds passed under the 55% voter approval threshold of Proposition 39. Providing a new avenue to funding does not guarantee that all students in all schools will benefit. In real-world effect, the better managed school districts are likely to use this program while the poorly managed districts are less likely to put together bond programs and will in effect slip farther behind.

8. Successful Deferred Maintenance Program Lacks Sufficient Ongoing Funding

The Deferred Maintenance program²¹ provides matching state funds²² for major periodic maintenance projects. "Deferred" is used in an accounting sense where monies are budgeted but the expenditure is deferred for a specified number of years until the major repair can be funded. Typical examples are roof repairs and replacement, repaving, painting, carpet replacement, and similar repairs beyond the scope of routine maintenance.

School districts submit "Five Year Maintenance Plans" which list how specific projects will be addressed by the combined state and local funds. For all its flaws, and some are discussed in this report, the Deferred Maintenance program has allowed school districts to perform literally millions of dollars of repairs like may never have been funded if local dollars alone where to pay the costs. Its biggest shortcomings are chronic underfunding and delegation of oversight to the local officials.

The program has been funded by the 'excess repayments" of the old Lease Purchase Program loans. These payments have decreased as the loans were paid off, and now the program must rely on annual budget appropriations by the Legislature and Governor. This change leaves

²¹ Education Code section 17582 *et seq.*

²² State match defined at Education Code section 17584(b).

the important Deferred Maintenance program at the mercy of the annual budget cycle and politicized decisions inherent in the Legislature.

California's Legislature has reported that there has been significant underfunding of the Deferred Maintenance program and that the result of that underfunding has caused both significant decline in facilities conditions, and increased the cost necessary to bring facilities up to standard:

"The Legislature finds and declares the following:

- (a) Because of the diminishing funds available through the excess repayments from the State School Building Aid Program, the state has been unable to fully fund the maximum amount of its contribution to the deferred maintenance fund authorized by law since the early 1980's.
- (b) School districts have the expectation that state funds will be available to match the local funds they set aside to meet their deferred maintenance needs.
- (c) The state's practice of not providing consistent, ongoing funding for deferred maintenance purposes has resulted in greater future facilities costs and has reduced the quality of education that can be provided to the state's 5.6 million public school pupils.
- (d) If repairs to school facilities are continually deferred, school districts eventually face more expensive investments, including, but not limited to, critical repairs, major rehabilitation, or complete replacement. School districts should be discouraged from deferring maintenance projects in the short run, because inadequate ongoing maintenance reduces the useful life of resulting in increased capital outlay needs, and putting more pressure on schools to access more expensive bond dollars in the long run.

(Legislative findings at Ed Code 17584.1.)

The reason that deferring maintenance creates greater costs in the long run is because the longer repairs are deferred, the more expensive they become. For example, if a school fails to patch a roof for a number of years, eventually, a whole new roof is needed and much sooner than would be the case if regular maintenance had been done on the roof. The cost of replacing a roof is far greater than patching it. In addition, if a roof is allowed to leak for a significant period of time, it will result in the need to replace ceiling tiles, fix water stained walls, and potentially mitigate resulting mold. As the LAO explains, "deferral of maintenance projects reduces the useful life of facilities and thus increases future capital outlay needs. As a result, while deferring annual maintenance needs can save districts money in the short run, it results in substantial additional costs in the long run." (Legislative Analysts Office, 1997.).

Recommendations for improving the Deferred Maintenance program presented by the Legislative Analyst's Office in their Analysis of the 1997-98 Budget Bill remain valid today, although few have been implemented. Recommendations included a large infusion to eliminate the maintenance backlog, rewards for districts who catch up and stay current with maintenance needs, sunset the state program and build funding into school district base budgets, require a minimum percentage of the local budget for maintenance, and require school boards to certify that maintenance funds are being used appropriately. (Legislative Analysts Office, 1997.)

9. The state operates several successful programs, but depends on local districts to seek out state funds

The state is to be complimented for its Deferred Maintenance Program and the Critical Hardship Program within that program, even though some problems and limitations exist. (Ed Code 17582 and 17587.)

School districts with an unforeseen repair or maintenance need (roof collapse, well failure, septic system breakdown, etc.) may apply for special funds to remedy the critical problem. What is unusual is that the amount of critical hardship funding is related to the need rather than an arbitrary formula. This system has worked for years, and demonstrates that the state can offer an equitable and effective "safety valve" to school districts with significant problems. However, this important program is narrowly targeted because it is limited to emergency situations. In my experience districts do not apply under this program, nor are funds awarded under this program, for most of the facilities conditions I have discussed in this report, such as roofs that are leaking due to long-neglected maintenance, broken toilets, etc. In addition, the program often runs short of funds and at times is unable to address critical health and safety needs in school districts with no other resources to address a major problem. The state maintains a list of eligible but unfunded critical hardship projects when the budget allocation for that year is exhausted. If additional funds become available these projects are addressed.

a) State has no system to ensure that all students benefit from Deferred Maintenance program

The same issue of applicant-driven funding exists for Deferred Maintenance. Each school district's participation in the State Deferred Maintenance funding depends on an annual

application and the local district providing matching funds. No one at the state level systematically tracks districts not participating in the program.²³ The program is entirely self-monitored by the school district; no one at the state level reviews whether the projects chosen represent the local district's highest needs.

The problems with having an applicant driven system, for which district participation is voluntary, is revealed in the minutes from the March 2002 State Allocation Board meeting. Those minutes reveal that numerous districts, including some districts such as Los Angeles Unified, Lynwood Unified, and Compton Unified School, which have a significant backlog of deferred maintenance, deposited far less than the one-half of one percent of their general budget in their deferred maintenance account. (Deferred Maintenance Program – 2000/2001 Fiscal Year, State Allocation Board Meeting, April 3, 2002).

Under the deferred maintenance program, the state matches at a rate up to a dollar for a dollar up to one-half percent of a district's general budget. For this fiscal year, the state is matching at a rate of approximately \$0.83 per dollar deposited by the district. Thus, by failing to set aside the maximum, the district is not only underinvesting its own money in reducing its backlog of deferred maintenance, it is losing the opportunity to obtain a significant sum of state money for that reduction. Thus, when Lynwood set aside only \$388,754 out of a possible \$593,604, it may miss the opportunity to gain a further \$170,025 in state funds to use to reduce its backlog of deferred maintenance. Below is a chart of some school districts, the amount they deposited in their deferred maintenance account, the maximum amount they could have deposited and received state matching funds, and the amount of state funding they risk losing if the amount deposited does not increase to the required amount.

²³ The Legislature recently required districts to report whether they had set aside the maximum possible amount in their deferred maintenance fund. (Ed Code 17584.1.) The statute does not require any specific action by the state for districts not setting aside the specified amount.

District	Maximum Possible Deposit	Actual Deposit	State Matching Funds Lost²⁴
Compton Unified	\$1,031,861	\$835,100	\$163,311
Los Angeles Unified	\$24,584,388	\$21,899,176	\$2,228,726
Lynwood Unified	\$593,604	\$388,754	\$170,025
Moreno Valley Unified	\$1,012,730	\$200,000	\$674,565

In light of the enormous backlog of deferred maintenance statewide, most notably in the Los Angeles Unified School District and other districts with great need, making participation in the deferred maintenance program, and the extent of that participation, a choice of the applicant district voluntary is a very poor idea. In my opinion, only those districts that can show that they do not have deferred maintenance needs should be exempted from full participation in the program.

b) Deferred Maintenance program does not monitor whether needs of students are being met

The state's Deferred Maintenance program has identified minimum time intervals for certain kinds of major repairs such as painting, roof replacement, carpet replacement, etc. The program does not monitor whether school districts are in fact replacing and maintaining these elements of their facilities on a systematic basis. For example, a district showing no roof replacements or repairs would not trigger any review by the state to ensure that the roofs are being maintained, possibly by another budget source.

c) Unintended consequence of Deferred Maintenance program

By providing half the cost of fixing major repairs, but none of the cost of routine or preventative maintenance work, the state has created an unintended incentive for some school districts to defer repairs until such work became eligible for partial state funding, rather than performing maintenance or the repairs in a timely manner using only district discretionary funds.

²⁴ These figures are based on a match rate of \$0.83 of State funds for every dollar of district met set aside in their deferred maintenance fund.

This practice is widespread across the state. As noted elsewhere in this report, maintenance and custodial budgets are generally the first target of budget cutting efforts, with some believing Deferred Maintenance will take care of the problem eventually. (LAO, 1998.)

d) Emphasis on what is funded by the state rather than what is needed

State funding rules have implicitly created a hierarchy of projects most likely to be addressed. For example, roof repairs are covered and addressed when matching state funds are available. Rain gutters and downspouts are not covered as separate items, and often are neglected until the roof is repaired, even though this neglect allows water damage to occur in and near buildings. (See Deferred Maintenance Handbook, OPSC web site, www.opsc.dgs.ca.gov.) Also, landscaping is not covered by Deferred Maintenance funding, and many districts have allowed their sprinkler systems, and therefore their fields, to fall into disrepair by not maintaining these systems that are important to students and the community, but are not part of the matching funds program.

10. First Come, First Served Allocation of Funds

State bond funds for Modernization are distributed on a first-come, first-funded basis as specified in the legislation. (See Education Code section 17074.15.) While this system was created by the Legislative process and implemented by statewide voter approval of Proposition 1A in 1998, students and school staff remain dependent on district officials to apply for these state funds. Outreach programs have been implemented for districts interested in the programs, but no systematic monitoring occurs of districts not applying for state funds or applying significantly later than other districts, which in most cases is tantamount to missing the funding cycle.

For a variety of reasons, including lack of time, lack of knowledge, or lack of money to get the application pieces ready, some districts don't fill in the applications. In many cases, applications are completed by outside consultants often paid by developer fee receipts. In areas with rapid growth, housing developers closely watch school funding efforts, as state funds received by the district reduces actual or perceived obligations of the developers.

The School Facilities Program requires that the school district front-load the application process. For New Construction, this means identifying, testing, doing environmental work, and acquiring land. For both New Construction and Modernization it requires that an architect be selected and complete plans be prepared and submitted to the state for review. Only after the state has approved the plans may a funding application be filed. (The proposed 2002 bond's Critically Overcrowded Schools program partly addresses this situation.) These steps take a lot of time and a lot of money. Districts without solid leadership, competent managers, staff time, and operating capital have a difficult time participating in the state programs. Many do, but the chance for failure is real. It must be acknowledged that the state Department of Education's School Facilities Planning Division and the Office of Public School Construction each have since 1998 undertaken many outreach efforts and have done extensive hand-holding with school districts to assist with filing applications. Even so, the agencies cannot make the clock stop for a district unable to get their projects moving across the counter in time to have funding.

11. State "incentives" for multi-track contributed to school crowding

State policies for new school construction beginning in the 1980s gave priority for funding, first by incentives and then by requirements, that school districts either operate Multi Track Year-Round Schools or take a "hit" (reduction) on their construction eligibility equal to the space potentially saved had they implemented Multi Track Year Round Schools²⁵. For example, Education Code 17017.7 gave priority for the approval of funds for new construction to districts that agreed to operate the new school on a multitrack year round basis. Either way, the state cut back the number of classrooms it would pay to build to force schools to address multi track. (The state's apparent goal was to fit more students into the fewer rooms to reduce the overall demand for construction funds). These policies have directly led to overcrowding, increased numbers of portable classrooms, and other detrimental effects as well as increase use of Multi Track calendars. Yet, the program remains in place. (Ed Code 17071.33.)

²⁵ Certain applicants, such as very small districts, were exempt from these requirements.

Some of the schools on Multi Track Year-Round calendars have enrolled in the Operational Grant program. (Ed Code 42260.) In simplest terms, this program promised an annual payment to a school district to cover the excess cost of year round operation in exchange for permanently giving up construction eligibility. Many schools in overcrowded areas took this deal because they were year round anyway, couldn't find readily available new sites, and needed the cash. The underfunding of this program by the state has caused severe problems for the affected schools, many of which are in low wealth, low achieving neighborhoods. For 2001-02 it is estimated that there will be about \$350 million in claims for a budget of \$70 million, giving districts about twenty cents on the dollar claimed under the statutory formula, yet the loss of eligibility for new construction has remained 100% of the claimed pupils. (Ed Code 17071.75(e).) In other words, if a district is educating 1,500 students in a school that has a capacity for 1,000 by operating the school on a Concept 6 multitrack year round calendar, and the district receives MTYRE operational grants, the 500 students are not considered unhoused for purposes of determining the district's eligibility for new construction funds. There is a real consequence to this issue that is overlooked because of its complexity and burden falling on predominantly Latino students generally low achieving schools in low income communities.²⁶

I recently listened to teachers, parents, students, and school district staff members discuss improvements underway at an elementary school in south Oxnard. This school is losing about \$195 per pupil or more than \$170,000 this year alone due to underfunding of the Operational Grant program.

Kamala Elementary School has capacity for 675 regular education students and a current enrollment of 880 students, generating "over capacity" Operational Grant eligibility for 185 students. State formulas promise \$1,155 per student for these "over capacity", or about \$215,000 per year. This annual amount pays for the cost of moving in and out of rooms as tracks change,

²⁶ School-by-school data was assembled and studied by the state Department of Education, Legislative staff, and others in developing the legislation which became AB 16 and the 2002 statewide school bond.

additional work days for the Assistant Principal, an extra office clerk to handle the paperwork and cover vacation times for the other staff, additional custodial hours, shift differential pay for custodians and gardeners required by the constant operation, (the school shuts down for only two weeks each year and works full steam the other 50 weeks, requiring the additional staff) and other costs. Because the state is funding about 20% of the grant request, this school will get about \$43,000 this year rather than the \$215,000 promised. Yet construction eligibility has been lost for all 185 students. What the kids will see is one less clerk in the office, fewer field trips, fewer new library books, fewer supplies, and so on. The missing money is about \$195 per pupil, or almost \$4,000 per primary classroom. This school scored a "1" out of 10 on the API test, a "1" on the similar schools ranking, 85% of its students get a free or reduced-price lunch (and, for many, breakfast), 60% are classified as English Language Learners, and 95% of the students are Latino, African-American or Filipino. Students needed inter-session remedial classes (the year-round version of "summer school") are bused out of the neighborhood to a different school with unfamiliar teachers and students. The teachers are asking for help, are working extra hours to change the lives of these students, but lose teaching time to multi-track calendars and now must cut their programs due to state underfunding.

12. Proposition 47, November 2002 Statewide Bond Measure (AB 16)

A major bond program for 2002 and 2004 has been approved by the Legislature and the Governor and will be presented to the voters in November 2002. This massive bond package proposes \$11.4 billion in 2002 and \$10.0 billion in 2004 for a total of \$21.4 billion for K-12 schools over four years. In addition, \$3.95 billion is proposed for higher education facilities. A breakdown of proposed funding is shown in the following table. Of the total, \$4.8 billion are for projects on file with the state as of February 1, 2002. The \$4.14 billion for Critically Overcrowded Schools (COS) will make a difference to urban centers and other areas where land is hard to find. These school projects could not compete effectively in the 1998 program due to difficulties in finding land, which delayed their ability to apply for state funds; the COS program allows applications without a specific site. The \$3.65 billion for new modernization projects also will make a great difference for California schools.

However, note that none of these dollars will keep schools clean, will maintain systems for effective operation, or will resolve basic management issues in certain districts. The Legislature and Governor are to be commended for taking this huge and bold step. But bond funds won't address all of the needs.

Eligibility criteria in the proposed 2002 bond are very similar to those in the 1998 bond, which gave equal consideration to existing unhoused pupils as it gave to projected unhoused pupils, including students projected to live in as-yet unbuilt homes. The Modernization amount is about \$900 million per year, which provides state funding for about 300,000 students (at an average grant of about \$3,000 per pupil). This is a lot of money for a lot of students, but is about 1/20 of the state's 6 million plus K-12 enrollment annually. Moreover, as I have previously stated, some facilities are in such bad shape that the "one-size-fits all" amount of modernization funding is not sufficient to bring those facilities into acceptable condition.

Proposed 2002 and 2004 Bond Allocations, AB 16

	2002	2004	Combined
	(amounts in \$millions)		
New Construction	\$3,450	\$5,260	\$8,710
Charter School Set aside	<i>\$100</i>	<i>\$300</i>	<i>\$400</i>
Developer Fee Offset	<i>\$25</i>	<i>\$25</i>	<i>\$50</i>
Modernization	\$1,400	\$2,250	\$3,650
Backlog-New Construction (02/01/02)*	\$2,900	\$0	\$2,900
Backlog-Modernization (02/01/02)*	\$1,900	\$0	\$1,900
Critically Overcrowded Schools	\$1,700	\$2,440	\$4,140
Joint Use	\$50	\$50	\$100
Energy Conservation	<u>\$20</u>	<u>\$20</u>	<u>\$40</u>
TOTAL K-12 ALLOCATION	\$11,400	\$10,000	\$21,400

Figures in italics are included in major categories

*Backlog amounts include Hardship

University of California	\$408.216	\$690	\$1,098
California State University	\$495.932	\$690	\$1,186
Community Colleges	<u>\$745.852</u>	<u>\$920</u>	<u>\$1,666</u>
Subtotal, Higher Education	\$1,650.000	\$2,300	\$3,950
GRAND TOTAL	\$13,050	\$12,300	\$25,350

Source: author's summary of AB 16, Chapter 33/2002.

The new bond will not provide relief for many students who attend schools suffering unusually poor conditions. Specifically, the new bond will do nothing to address the following categories of students, or will be insufficient to bring those students' schools into acceptable condition:

- * Students in overcrowded multitrack year round schools, where the district cannot afford to or, for other reasons, will not forego MTYRE operational grant funds;²⁷

- * Students in schools that have not passed a bond, or cannot raise significant funds from developers fees, and do not satisfy the financial hardship criteria²⁸ set forth in CCR Title II, Section 1859;²⁹

- * Students in districts that fail to file applications for new construction or modernization funds that the district might be entitled to;

- * Students in schools where the conditions are poor yet the school is not eligible for modernization funds because the school has already received modernization funds in the past. For example, a 75 year old school that was modernized 20 years ago would not be eligible for modernization funds for five years, even if it were in terrible condition;

²⁷ The numerous reports I have seen about huge cutbacks in districts such as LAUSD, with large numbers of multitrack, year-round schools, creates serious doubt whether districts will be able to afford to forego their Operational Grant funds under Ed. Code § 42263 in order to restore their eligibility for construction funds. If they cannot, then they will be unable to obtain state funds to build new schools so they can take schools off multitrack calendars, unless the district has 40 percent of its students attending multitrack schools. If so, then for schools in that district that are on a MTYRE calendar and where the density is more than 200 pupils enrolled per acre, the district can count the number of students exceeding the school's "capacity" as "unhoused." Ed. Code § 17071.40.

²⁸ Under the current regulations, a district must provide 50% matching funds for new construction projects unless it meets the financial hardship criteria in CCR Title II, Section 1859.81. The principal criteria are that the district current bonded indebtedness is at least 30% of the district's total bonding capacity, or the district had a bond election within the past 4 years and "received at least 50 percent plus one vote."

²⁹ Voters in districts with bad facilities management might very reasonably vote against a local bond because they believe that the district will mismanage the bond funds. Such an outcome might be rational from the voters' perspective, but it leaves students in poor school facilities because of the failure of the State to correct management problems at such schools. Moreover, poorly managed districts are unlikely to run a well-managed bond campaign. Again, the students in such districts need more help from the State if they are to benefit from the opportunity that the state bond issue presents.

* Students in schools that are in such poor condition that the modernization funds, which do not vary based on the actual facilities needs at a school, will be insufficient to remedy all the serious problems at the school:

* Schools where unusually poor conditions result from inadequate maintenance and custodial care.

Other features of the bond could be discussed, but the key point is that the proposed bond will not eliminate the problems at the core of this report.

The new bond will provide substantial benefits for students in districts that are eligible for funds and well enough managed to use those funds appropriately. It also heightens the need for effective state oversight, rather than lessening it. Unless the state's facilities financing system changes dramatically, it is unlikely that there will be another bond of anywhere close to this magnitude in the near future. If districts miss this opportunity, their students will suffer; yet the State has not announced any plans to ensure that the districts most in need will apply for bond funds their students desperately need, as has happened in numerous instances in the past. Nor will the availability of money, without more active State oversight and assistance, prevent some districts from mismanaging their modernization and construction efforts.

Finally, although the new bond is large, it does not provide enough money to satisfy even the State's own definition of the modernization needs. Nor is there sufficient money to enable districts to build off of multitrack, year round calendars, including Concept 6 calendars.

According to the "School Facilities Fingertip Facts" put out by the School Facilities Planning Division of the Department of Education, as of 2002 there were an estimated 201,000 classrooms that are over 25 years old, and therefore eligible for modernization funds. Using an average figure of 26 students per classroom, there is a need for modernization funds for 5,226,000 students. According to the State's figures, approximately 3.4 million or 56% of the State's 6.05 million students are in elementary school; approximately 933,000 or 15% of the State's students are in middle school, and approximately 1.7 million or 29% are in high school. Applying those percentages, it is fair to assume that approximately 2,926,560 of the student

eligibility for modernization funds is for elementary school students; 783,000 is for middle school students; and 1,515,540 is for high school students.

The proposed state bond provides 60% of the modernization funds, with the district required to provide 40%. Under the bond, the state provides \$2,471³⁰ per elementary school student to a district that has modernization eligibility if the district provides approximately \$1,647. The state's share for middle schools is \$2,641 and for high schools it is \$3,422. Since there are 2,926,560 elementary school students in classrooms that are eligible for modernization funds, the state's share of modernization costs is $2,926,560 \times \$2,471$ or \$7.23 billion. The state's share of modernization costs for middle school students in classrooms that are eligible for modernization is $783,000 \times \$2,641$ or \$2.06 billion; and the state's share of modernization costs for high school students is $1,515,540 \times \$3,422$ or \$5.19 billion. In other words, in order to meet state's share of the funds needed for modernization of the eligible classrooms as of 2000, the new bond and the funds from Proposition 1A together would have to provide for \$14.48 billion. However, the amount for modernization in the new bond is \$5.55 billion and the amount in the old bond is \$2.1 billion. The sum of these two figures falls about \$6.8 billion short of the modernization need, as estimated based on the State's numbers. This estimate of the shortfall may be low because my calculation does not include districts that are eligible for modernization funds and qualify for hardship funding, thereby increasing the state's share of the modernization cost to 100.

The existence of this gap between modernization need, as defined by the state's criteria, and the actual amount of money available for modernization heightens the importance of ensuring that the districts and schools with facilities in the worst condition should get their share of this money. However, the bond makes no provision for any type of prioritization in the

³⁰ The state's baseline per student modernization amount is set forth in Section 13 of the bond, but then is adjusted upwards as called for in Education Code 17074.10(3)(b).

distribution of modernization funds. Nor are there any plans for a system of oversight to make sure that districts that have needs take the necessary steps -- e.g., run a bond campaign or seek developers fees, and file applications in a timely fashion. As I have said before, in many cases it is the poorly managed districts who are least likely to obtain the funds that they need, or even the funds they would be expected to obtain if each district obtained a share of the available funds proportionate with the number of classrooms in the district eligible to be modernized.

I also understand that the amount provided in the bond for new construction is a rough approximation of the amount necessary to build classrooms for those students who are currently “unhoused” under the definition of unhoused set forth in Education Code 17071.15 et seq, as well as the projected enrollment growth figures through 2006. This combined total does not include the number of students who are currently on multitrack year round calendars, above and beyond the actual capacity of the schools they attend, and for whom the district accepts operational grants. In other words, even if those districts that currently have schools on multitrack year calendars chose to forego operational grants in order to make those “excess” students meet the definition of unhoused students, the total pot of money would not be sufficient to enable seats to be built for all these students.

State Senator Dede Alpert, who was heavily involved in the negotiations concerning the bond measure, has acknowledged that the money in the bond is insufficient to meet need for new construction and modernization. “Even \$25 billion isn't enough to fix everything, said Sen. Dede Alpert, D-Coronado. ‘We have more need than there is room in this bond.’” (Frith, School Bonds Head Toward Ballot, *San Diego Union-Tribune*, April 5, 2002).

My discussion of all of these problems with the new bond is not meant to suggest that the new bond is not a positive step towards remedying some of California’s enormous school facilities problems. However, the new bond is not a solution to all the problems. Once the funds are distributed and the work done, there will still be many categories of students who remain in schools with unreasonably poor conditions.

D. Poor conditions in schools most often reflect budget choices rather than inevitable results of funding

In my experience, disrepair or unclean facilities in schools are likely to be the result of budget choices made at the local level such as reducing custodial staffing or maintenance work crews when faced with a tight budget. Lack of state standards and performance requirements has led to the situation where local officials, often under intense budget pressure from unions and facing operating costs such as electricity and insurance, will trim custodial and maintenance services. For example, the March 29, 2002 article in the *Sacramento Bee* that showed 54.2% of school districts in that region with budget deficits trimmed Facility Maintenance, more than any other spending category. (State's Districts Strain to Keep Small Classes, *Sacramento Bee*, March 29, 2002.)

This tendency has been dampened somewhat by the requirement for districts receiving funding under Proposition 1-A to apply a minimum percentage of their budget each year to maintenance related costs.

As another example, in April 2002 the State Allocation Board received a list of school districts not placing the minimum one-half of one percent of their annual budget into the Deferred Maintenance account. Some districts are very small, but some are larger urban districts with many facility needs. (See SAB agenda report, April 2002.)

E. Other Aspects of State Facility Funding Programs

Other aspects of state facility funding programs are discussed below.

1. State bond program requires minimum local budget for maintenance

The School Facilities Program requires each participating school district to use at least three percent (3%) of its budget for maintenance related purposes. (Education Code 17070.75.) The Education Code permits districts to count the funds they set aside for deferred maintenance, up to _ percent of their budget, towards the 3% requirement. (Education Code 17070.75(b)(2)). This program will help in the future by forcing local districts to allocate funds for repairs and upkeep. It is worthwhile to note that this program is monitored by the local school district's independent annual auditor, by the County Superintendent of Schools who must review and approve the school district's budget, and by the state who also reviews the budget. Districts must

show that they placed the money in an appropriate account, but not that funds were used to correct existing serious problems.

However, the minutes from the April 3, 2002 State Allocation Board Meeting concerning the Deferred Maintenance Program – 2000/2001 Fiscal Year, suggest that some districts may still not fulfilling their obligations under Education Code 17070.5. As I explained before, those minutes listed numerous districts that had not set aside _ percent of their budget for deferred maintenance purposes. Yet some of those districts, including LAUSD, have received funds for school construction under Proposition 1A. In my opinion, it is very unlikely that a district that does not set aside _ percent of its budget for deferred maintenance is nevertheless satisfying the requirement that it set aside 3% of its budget for maintenance of its buildings. When I raised this issue with staff at the OPSC, they said they would look into it.

Even with the positive step of requiring a minimum maintenance fund as a condition of receiving Proposition 1A funds, the National Research Council has reported that spending 2-4% of *replacement cost* on maintenance and set-aside for periodic repairs is a good benchmark, a level of support almost never seen in California schools. (Committing to the Cost of Ownership, National Academy Press, 1990.)

2. State withholds facility funding to punish previous financial mismanagement

The state on occasion has withheld state funding for facility construction or modernization due to financial problems of previous administrators of a school district. Education Code section 17017.1 spells out constraints on the West Contra Costa Unified School District where very real abuses did occur, but current students continue to experience poor conditions. Education Code section 17070.51 imposes similar punishments on schools and students for abuses in the new School Facilities Program.

The effect of these actions and threatened actions falls on the students for misdeeds of administrators. Without new school to reduce crowding or modernization to improve conditions, the schools where the kids spend their time, and the students in those schools, had to wait years to get the chance to attend a better school or less crowded school. Financial misdeeds deserve

sanctions; however the "collateral damage" here involves innocent children, not the guilty grownups.

IX. Articles, Citations, and Discussion of Individual School Districts

In assembling this expert report, I reviewed many newspaper clippings, reports by state agencies, and other resource documents. These were briefly summarized in an earlier section. The following section provides more complete discussion and quotations from these documents. In all, they paint a picture of longstanding and widespread needs. Again, I read these and visualize the faces of the children in these schools. This isn't about blame; rather it is about the children who spend their time in a poor or unusually poor environment.

A. Los Angeles Unified School District

In 1985, the *Los Angeles Times* reported that "[t]he bathrooms [at Taft High School] were absolutely filthy. . . . They got so bad the kids wouldn't even go in them" and that the "condition of the campus had deteriorated. 'There were desks out in hallways,' Singer [the leader of a group of PTA members] said. 'In some cases, students had no desks.'" (Barker, Stormy Year in Taft Principal's Transfer, *Los Angeles Times*, July 10, 1985.)³¹

A 1988 article in the *Los Angeles Times* reported:

At Gardner Elementary School in Hollywood, the school year started out pretty much as the old one had ended - with one long list of annoying problems. There were only eight toilets and two drinking fountains for the nearly 500 students returning to school. There was no running water in the nurse's room to wash cuts. Many of the classes were without books and other materials. The Library was shut down. There were no buzzers or intercoms to communicate between classroom bungalows. No pay telephones on campus. And no heat for the winter.

³¹ I have not verified the content of all of these newspaper articles. However, the conditions reported in them are consistent with the kinds of conditions I have seen in many schools as well as the conditions reported by respected experts such as FCMAT and the Little Hoover Commission.

(Mitchell, *Going to School Becomes an Exercise in Frustration*, *Los Angeles Times*, Oct. 23, 1988.)

A 1992 *Los Angeles Times* article discussed unclean conditions at one LAUSD high school due to insufficient attention to maintenance and operations:

Outside, the well-tended campus belies the maintenance cutbacks. Graffiti etched on campus walls hardly has a chance to dry before it is wiped clean. But inside, there are telling signs of neglect. Hallway floors have a coating of dust so thick they are slick, almost slippery. Half the bathrooms have been padlocked because there are too few security aides to patrol them, and the others are reeking and filthy by mid-morning.

(Banks, *Schools in Crisis: Grim Days at Grant High*, *Los Angeles Times*, Jan. 5, 1992).

A 1994 *Los Angeles Times* article reported LAUSD employees admitting that they were facing an enormous and growing backlog of maintenance and described the consequences of this backlog.

The sprawling LAUSD has accumulated \$600 million worth of deferred maintenance projects. "We're only funded at one-third of what the needs are," said the Director of Maintenance and Operations for the District. "We spend less than any other major school district by far, and less than any school district I am aware of in the country on maintenance." Doug Brown, the current head of LAUSD's Facilities, Asset and Management Division recently warned the Board members that without additional funds, "that \$600 million will grow to \$900 million, that \$900 million will grow to \$1 billion. Pretty soon, you have to shut down schools and where are you going to put kids?"

(Smith, *Los Angeles Times*, Nov. 9, 1994)

The article described the consequence of neglected maintenance upon these schools, such as Benjamin Franklin High School.

A boy's bathroom reeks, its stench sometimes reaching the attendance office, students said. The day was warm and cloudless, but one student described the campus and "gray and gloomy." The Los Angeles Unified School District hasn't once repainted this school since it was rebuilt in the 1960s. The older gym, heated with radiators from the 1930s, has no air conditioning. Three on-site custodians have been lost to cutbacks and until last week, no full time gardener has tended the 19-acre, multi track, year-round campus.

(Smith, *Los Angeles Times*, Nov. 9, 1994)

State Superintendent Eastin was quoted in 1996 saying – after having been "shown classrooms where the floor tiles are all detached and a room with a gaping ceiling hole caused by

a roof leak, which the school has stopped repairing because it reopens in every rainstorm. A school restroom emits a stench, despite scrubbing and steam-cleaning, because bacteria have seeped into the walls" – that "[f]or too long, LAUSD students have sat in classrooms where roofs leak, the paint is peeling and air-conditioning is all but nonexistent" and that "[i]f we allow these conditions to continue, we are not doing right by Los Angeles' children." (Pyle, Delaine Eastin Pledges Support for Ballot Measure That Would Fund Repairs at the District's Aging Facilities, *Los Angeles Times*, October 4, 1996)

In 1998, a Los Angeles Times reporter visited Jefferson and Fremont High Schools, at the invitation of students who were complaining about the poor conditions at their school. The article states that "[t]he filthy, smelly toilets and burned-out lights tell a story of failure, indifference and bad management in the Los Angeles school system. So does graffiti on the walls and dirt-encrusted drinking fountains." The reporter noted that at Jefferson High School

[p]aint was peeling from the ceiling. Walls were stained with graffiti. As we walked over to the gym, I could smell the toilets even before I entered the building. It's the third day they've been dirty, one of the students said. A young woman in our inspection party said the floor in the girl's bathroom was covered with water. Acoustic tiles have fallen off the walls inside some of the buildings and not been replaced. Bleachers burned in a Fourth of July fire were unrepaired. There was no grass on the football field, just rock-solid dirt. The running track was made of sand and dangerously pitted. The scene at Fremont, a few miles southwest of Jefferson, was just as bleak. . . . Graffiti was part of the décor, just as it was at Jefferson. One of my guides pointed to the tiles that remained on a ceiling. 'In third period, a tile fell on a boy's head,' she said. The auditorium was locked, but one of the students told me seats were missing and a wall still had not been repaired from a recent fire that inflicted severe damage. In the covered luncheon area, most of the lights in the ceiling were out. In an upstairs classroom, water leaking from the roof had blistered the wall and the chalkboard. Instead of replacing the chalkboard, repair crews had merely covered it with green paint, which was peeling.

(Boyarsky, Impoverished Old Schools Need Bigger Share of Prop. BB Funds, *Los Angeles Times*, January 19, 1998.)

This same reporter later published that "[a] week after I wrote about our visit, Beth Louargand, district facilities manager, sent a memo to the school board members representing

the Jefferson and Fremont areas, confirming my assessment." (Boyarsky, Students' Gripes About Schools Bring Results, *Los Angeles Times*, Feb. 9, 1998.)

In 1999, the Little Hoover Commission issued a report that was extremely critical of LAUSD's facilities management and the conditions in LAUSD schools. "[i]n some classrooms, there are twice as many children as there are desks. Some 15,000 school children ride buses each day because there is no room at their home school." (Little Hoover Commission, 1999, at 4.) As summarized by the Commission, "[a]nother generation of children in Los Angeles have been doomed to overcrowded, uninspiring, and unhealthy schools." (Little Hoover Commission, 1999.)

According to recent reports, widespread maintenance problems persist in LAUSD. Investigators, although only about halfway through their inspection of all district facilities under the Safe Schools Program, have already made alarming findings.

So far, officials say 7,434 health and safety deficiencies have been found – 1,544 of them serious. Inspectors scrutinize individual school sites for hazards in 20 categories, ranging from the serious – for example, peeling lead paint in elementary schools, categorized as a Priority 1 violation – to the not-so-serious, such as failure to post a safety notice. District K, which stretches from San Pedro to Gardena, so far has the greatest number of violations per school – 24, including six ranked as Priority 1.

(Garza, Schools Above C in Safety, *L.A. Daily News*, March 26, 2002). While the inspections have not been completed, LAUSD officials believe the findings are useful because they provide "an overall picture of the conditions of the district's schools. Likewise, the *Los Angeles Daily News* reported in February 2002 that:

Inspectors have found scores of glaring health and safety violations at San Fernando Valley schools: blocked emergency exits, peeling lead-based paint, haphazard use of toxic chemicals among others. . . . Taft High had 37 violations ranging from improper storage of chemicals, acids and flammable liquids to dangerous use of electrical wiring. Northridge Middle School received 29 citations for everything from the absence of quick-release latches on classroom window grills to flaking lead-based paint and blocked emergency exits.

(Mariel Garza, Safety Violations Plague Schools, *Los Angeles Daily News*, Feb. 10, 2002.)

Most recently, in response to the LAUSD's plan to build an individual bathroom for each of its board members without addressing the critical bathroom shortage on its students' campuses, the Los Angeles Times described disgusting conditions in some of the restrooms in schools in the district.

Here's what the students at Bethune Middle School in South Los Angeles get: holes in the wall where fixtures had been, no toilet paper, no soap, no paper towels and no doors on the stalls. And here's what the kids at Palms Middle School get: graffiti, scratched toilets, protruding, rusted, broken fixtures and grimy floors. And the fun doesn't end there. At Venice High School, graffiti may have been painted over in a student restroom but that did nothing to lessen the overpowering stench of waste in clogged toilets. And here's what the school board members and the superintendent will get: individual, brand-spanking-new, clean and functioning restrooms at the district's new headquarters.

(Editorial, School Board's Royal Flush, *Los Angeles Times*, June 19, 2002)

B. Oakland Unified School District

In 1994, the *San Francisco Chronicle* reported that:

Flaking plaster from a waterlogged ceiling covers the floor in a classroom at Calvin Simmons Junior High in Oakland, a room locked from the students for safety reasons. The classroom looks like it belongs in an abandoned building, not in an open school where the community sends its children to learn. Joe Mears, the man in charge of leaky roofs and flaking plaster at more than 100 sites owned by the Oakland schools, shakes his head as he relocks the door to Room 130 to make sure no one can enter. He knows he can do little else. The cause of the damaged ceiling is a leaky roof, which the school district cannot afford to fix right now. "All we can do is patch, patch. We know the preventive maintenance that needs to be done, but we can't do it. There is no money except to handle crisis after crisis," said Mears, director of facilities management for the Oakland Unified School District, which serves more than 50,000 students.

(Olszewski, A Lesson In School Decay, *San Francisco Chronicle*, October 27, 1994.)

In 1995, the *San Francisco Chronicle* reported that "[a]t Jefferson in the Fruitvale flatlands, 1,200 elementary students are packed into a campus designed for 750 students, with the overflow spilling into portable classrooms. The children share six deteriorating bathrooms, a single eating area and an overcrowded playgrounds, which creates logistics nightmares."

(Olszewski, Oakland Wrestles With Problems in its Public Schools, *San Francisco Chronicle*, August 7, 1995.)

The same year, the *San Francisco Chronicle* reported that parents and students rallied at the school district offices "to call for better facilities at Lazear Elementary School, which consists entirely of 40-year-old portable classrooms" that parents described as "tiny, windowless, poorly ventilated and are unsafe for students and teachers."³² (Oakland Parents Rally For Real Classrooms, *San Francisco Chronicle*, May 20, 1995.)

The independent agency FCMAT (Fiscal Crisis and Management Assistance Team) conducted a safety audit of the Oakland Unified School District during the summer and fall of 1999. The *Get On The Bus Tour* included hundreds of parents, community members, and city and county political leaders. This preliminary review identified a significant number of safety concerns at school sites throughout the district. "It was clear from reviewing the safety audit that the Oakland Unified School District had ignored its basic infrastructure. In terms of the learning environment, it was also reported to be clear to the tour participants that teachers could not teach and students could not learn in unsafe and unhealthy facilities." (FCMAT 2883) In its rating of Oakland schools during the *Get On The Bus* Tour, nineteen of Oakland's 72 schools which were rated received "F"s and ten received "D"s. (FCMAT 0116.)

The FCMAT report highlighted a number of particularly serious problems. According to FCMAT, "[p]oor ventilation and lack of maintenance and monitoring of indoor air quality present health risks to students, faculty, and visitors to the school." (FCMAT 3414.) Elsewhere, the FCMAT report stated "[m]ost schools experienced significant heating and ventilation problem which were the subject of repeated complaints. . . . One middle school's roof-mounted ventilation unit was found to have been recirculating its own exhaust throughout the school." (FCMAT 3523.)

FCMAT's explanation of why Fremont High School received a "D" illustrates the severity of the facilities problems in Oakland. "Serious safety and health issues" include: "Large rats are entering the classrooms. . . . Campus lighting very poor. . . . Electrical hazards in

³² Lazear was modernized in 2000, bringing better conditions for students and staff.

portables. . . . Exposed electrical panel in gym."

(<[http://www.fcmat.org/stories/storyReader\\$49](http://www.fcmat.org/stories/storyReader$49)>)

What is not communicated by the FCMAT report is the sheer crowding of almost 2,000 students packed into an eight acre high school campus. One can stand outside the fence on High Street and see the inequality in opportunity for students in Physical Education and athletics – the sports area is vastly improved with the all-weather surface, but in no way can compare with the opportunities available at a newer, 40 acre plus high school in the suburbs where students have several baseball and softball fields, a football stadium, several soccer fields, tennis courts, numerous basketball courts, and so on. I admire the dedication of teachers at this and other urban schools who do daily miracles with students. I admire students who work hard to achieve in a difficult social environment. The point here is that facilities aren't equal in the most cursory view, and the findings of FCMAT that the work of dedicated teachers and students is made even more difficult by poor lighting, electrical hazards, and so forth is very troubling. By coincidence, the District facilities and maintenance building is only a few blocks to the west.

The State's own notification of findings from the 1999-2000 Coordinated Compliance Review of the Oakland Unified School District noted that parents had answered reviewers' questions regarding "[w]hat needs improvement?" with the following facilities recommendations for the district: "[b]etter school facilities, [fix the problem of] no yards for students to play, age-appropriate play ground equipment," "[u]nsafe water fountains, pipes need to be capped for water, this has caused health issues for students, i.e. asthma, rashes." (DOE 23201.)

The II/USP action plans for some of the schools in the district similarly underscore the persistence of extreme maintenance issues in Oakland Unified School District. For example, the district's action plan for Garfield Elementary School, prepared in 2000 stated: "The school facility is not well maintained, clean, or adequate and does not promote creative and innovative approaches to teaching and learning." (DOE 00031105.)

Likewise, the action plan the district prepared for Stonehurst Elementary School in 2000 reported: "[a]lso significant and problematic are the city of Oakland's sewer lines that cross the school property and flood the school during the heavy rainy season. This causes total disruption

of school activities." (DOE 00046968.) Evaluators recommended that "[a] comprehensive safety assessment be made of Stonehurst to immediately eliminate hazards such as faulty heating systems, torn carpets, building cleanliness, etc." (DOE 00046989.) The action plan continued:

One section of classrooms at Stonehurst Elementary School was built as open space classrooms. Teachers created partitions throughout the classrooms to minimize visual distractions and sounds from neighboring classes. These included portable chalkboards, file cabinets; paper hung from the ceiling and other makeshift sound barriers and partitions. In several classrooms the observer overheard teachers and students from adjoining classes. At times students were distracted by the noise from other classrooms.

Two classes observed were clearly too small for use as a classroom. The principal verified that those rooms were not intended to be classrooms but had to be use because of space needs.

One fifth grade class off the auditorium had folding accordion doors that were not soundproof. A teacher was teaching violin classes during the observation of the fifth grade class. The violin playing could clearly be heard and would cause the fifth grade teacher to raise her voice above the music. This room was not only noisy, but it was too small. The class size had been kept lower than other fifth grade classes because of the limited space. The room did not have bookcases or storage space and insufficient chalkboards. The room was also cold. The teacher wore a heavy coat and gloves and told the students if they were cold not to forget their coats and gloves. This room posed safety and health problems. The carpet was torn in many places and was taped by the teacher as a stop gap measure. The carpet was littered with paper and clearly had not been cleaned. The custodial services for this room could be an issue to investigate.

(DOE 00046991.)

Summaries of interviews with Stonehurst teachers and instructional assistants included the following observations:

- * "The physical facility is not adequate for the large student enrollment. There are not enough classrooms."
- * "Not enough classrooms. Classes are held in the library and on stage;"
- * "Not enough accessible bathrooms. They are too far apart;"
- * "Too many potholes on the playground. Not enough playground equipment;"
- * "Older portables need renovations. Carpets and floor are in need of repair;"
- * "Lack of water fountains in building 'D'"

(DOE 00046994; DOE 00046999.)

C. Compton Unified School District

In 1988, the *Los Angeles Times* described the "horrible environmental conditions" that plagued Compton Unified School District. (Stein, Carson Vs. Compton; High Crime Rate Of

Neighbor To North Is Cited In Attempts By Carson To Distance Itself, *Los Angeles Times*, January 15, 1988.) The article quoted a teachers' union president describing "'horrible' conditions for students and teachers, including leaking ceilings, broken windows, 'filthy' bathrooms, bird droppings on classroom floors and a lack of fire extinguishers. 'I'm surprised that the Fire department or Health department had not gone in and closed down those schools for being unsafe and unhealthy,' said Mary Futrell, president of the National Education Association."

According to the Los Angeles County Office of Education, in a report submitted to the Legislature in the spring of 1993:

Facilities are in extreme disrepair causing serious situations including:

- Exposed electrical wires were seen in classrooms, in close proximity to water, due to leaking roofs.
- Collapsed ceiling with active electrical units hanging, some in rooms where children are housed.
- Open, deep trenches (approx. 4 ft) left by incomplete repair work on gas and water lines are present on some campuses. These trenches are not always cordoned off.
- Broken windows, replaced with plywood causing classrooms to be insufficiently illuminated.
- Loose floor and ceiling tiles.
- Lack of heat during cold and/or rainy weather.
- Flooded play areas on school grounds, due to poor drainage system.

(Los Angeles County Office of Education, Report of Priority Corrective Actions for the Compton Unified School District (1993) at 17.)

In 1994, the *Los Angeles Times* article reported that:

[s]ome schools have boarded up the rotten buildings that district can afford neither to fix nor tear down. In one of the closed buildings, a middle school teacher once fell through the floor, its support undermined by gophers, Harris said. One high school pool has been unusable since the 1987 Whittier earthquake. At Theodore Roosevelt Elementary School, built in 1922, parents have gamely painted the façade and planted colorful flowers. But the windows that are open won't ever close and windows that are shut won't open. Some doors have no knobs. The toilet stalls have no doors. Principal Jackie Cochran said the sewer backs up once a quarter.

(Smith, *Los Angeles Times*, Nov. 9, 1994).

Three years later, in 1997, the California Department of Education and State Superintendent Delaine Eastin issued a Progress Report on the Compton Unified School District, acknowledging that "[t]he district's facilities had been neglected, underfinanced, and inappropriately maintained for years. This neglect created health and safety problems for students and faculty. Most facilities were and still are in need of major repairs and modernization." (State Department of Education/Superintendent of Public Instruction, Progress Report on the Compton Unified School District, February 18, 1997, at 5.) The Progress Report also noted, for example, that:

- Every roof in the district was evaluated by a roofing consultant who determined that they all had zero life remaining. In other words, every roof on every one of the district's buildings needs to be replaced.
- The overall costs for modernization and repair of facilities is estimated to be approximately \$50 million.
- Supervisors and staff have not been able to demonstrate any real progress on keeping the sites clean and well maintained.

(SDE & SPI, Progress Report on the Compton Unified School District, February 18, 1997, at 50.)

That same year, the *Los Angeles Times* reported that

[I]n the 3 _ years since the Department of Education took control over the debt-saddled Compton school district, many buildings have fallen deeper into decay and disrepair: Leaky roofs sometimes drive students and teachers out of their classrooms. Broken windows are left unrepaired for months. . . . Most classrooms have no heating or air conditioning, forcing students to endure cold or sweltering temperatures. And some restrooms are so filthy and dilapidated that students refuse to use them. 'If these schools were prisons, they would be shut down,' said Maureen DiMarco, Governor Pete Wilson's former chief education advisor. . . . Records show that there is a backlog of 2,400 work orders to fix everything from broken water pipes to exposed electrical wires. . . . Compton Unified is still a bleak landscape of boarded-up windows, blistered paint, sagging roofs and fetid restrooms. The walls and floors of many portable classrooms are rotted and cracked. Ceiling tiles have fallen in many buildings. . . . In classroom after classroom, water seepage has caused portions of the ceiling to fall. Desks and chairs are dripping wet. Puddles form on the floor. . . One recent morning, 12 of the 30 students had been carted home by parents, who pull them out of school on rainy days for fear they will be hit by ceiling tiles or shocked by exposed wiring. Conditions have been this way, teacher Betty Wilson said, for nine years.

(Leeds, *Los Angeles Times*, Jan. 26, 1997).

According to the same article, a Los Angeles County Grand Jury report written in 1985 stated that "[d]uring the past 15 years, physical maintenance has consisted primarily of stopgap measures to repair damage rather than capital outlays to restore the buildings and sustain their useful lives." (Leeds, *Los Angeles Times*, Jan. 26, 1997.)

According to a 1999 FCMAT report, many of the unsatisfactory if not deplorable conditions identified as early as 1985 were still plaguing Compton schools. In 1999, following a 1998 comprehensive assessment of Compton Schools, FCMAT reported that "[t]here is still much to be done regarding improved facilities. Approximately 50 percent of the rooms visited had malfunctioning or non-functioning heating and ventilation systems." (FCMAT 4475.) FCMAT also reported that "[a]pproximately 40 percent [of the rooms] had poor lighting. These two deficiencies have a major impact on instruction and must be corrected immediately." (FCMAT Compton Facilities Management Introduction, page v., 1999).

In the same 1999 assessment, FCMAT stated that

[b]athroom facilities topped the list in most urgent need for cleaning and replacement. Most of the bathrooms that were operable were quite pungent. One bathroom facility had five toilets without any privacy partitions. While operable, the fixtures were quite old and in need of repair. The aroma of the bathrooms is a concern since the site visits were during the first and second days of the school year when they should have been the cleanest before the students arrived.

(FCMAT 5303.) Regarding heating and ventilation, FCMAT further found that

[n]atural ventilation opportunities have been minimized at various buildings over time due to safety and security risk prevention measures. These conditions prevent the room occupants from having adequate heating and ventilation, which are especially problematic during the summer months. Some of the conditions found include entire classroom wings that had the windows removed and rooftop HVAC units or systems installed. However, when the units malfunction due to obsolescence or lack of maintenance, the only means of ventilation is a single exterior door. Other conditions observed include teaching and learning areas where HVAC systems

were not properly balanced. Some of these problems resulted in room being heated while outside temperature was above 80F degrees.

(FCMAT 5317.)

D. San Francisco Unified School District

Similar problems have been reported in San Francisco's schools over ten years ago and continuing today. In 1992, the *San Francisco Chronicle* investigated conditions at a high school in San Francisco.

A small triumph -- I finally find the girls' bathrooms on each floor. Some of the stalls are missing doors. Recent budget cuts included custodians, which means filthy bathrooms, sinks filled with paper towels and permanently out-of-order toilets. Last year, the kids tell me, the second- and third-floor bathrooms were locked because they couldn't be properly cleaned.

(Nix, Firsthand Look at a S.F. High School, *San Francisco Chronicle*, Nov. 16, 1992)

Likewise, a school facility appraisal for the San Francisco Unified School District conducted in 2001 by Dr. Robert McCord reported safety hazards and other significant facilities problems in a number of the schools he visited. For example, at Cesar Chavez Elementary School, Dr. McCord found the following problems, among others:

- Landscaping is very poorly maintained.
- Many broken windows in evidence
- Substantial evidence of leaking roofs with extensive ceiling tile damage
- Significant amount of low voltage wiring exposed
- Filthy restrooms located on first floor
- Transfer kitchen requires significant attention to cleanliness
- Floor surfaces in classrooms are aging and require repair and/or replacement
- Interior paint is badly deteriorated while exterior recently painted and contain wonderful murals.
- Computer rooms extremely hot during visit as were other rooms
- Gym/MP floor is filthy and significant unresolved damage exists to the wood floor.

(SF 03083.)

Dr. McCord found the following problems at other schools, such as Malcolm X Elementary School:

- Landscaping is poorly maintained.
- Significant (30+) window breakage was present during two visits
- Lighting requires significant upgrading

- Reports that hot water is only on when central heating is on – confirmed during two visits to facility
- General lack of cleanliness of the facility suggests that significant attention needs to be devoted to the facility. Exterior areas (for example, the kindergarten playground building entrance) are filthy with evidence of tagging. Floors, other than terrazzo surfaces, appear to be poorly maintained without proper periodic and thorough stripping prior to rewaxing.
- Floor surfaces in classrooms are aging and require repair and/or replacement.
- Bathrooms are filthy and require expansion, rehabilitation, and thorough and continuing cleaning support.

(SF 03106-07.)

San Francisco Unified School District adopted Dr. McCord's findings regarding the dismal condition of San Francisco school facilities in a report the district filed with the Court, and with the State Board of Education and the State Department of Education, in April 2001. (Local Defendants' Report to the Court Regarding Comprehensive Plan for Consent Decree Implementation, NAACP v. SFUSD, April 27, 2001 at 20; available at <http://www.gseis.ucla.edu/courses/edlaw/sfusd41101brief.pdf>.) In that same report, SFUSD noted that the Consent Decree Monitor "found serious environmental concerns about Malcolm X Elementary, which is a school with a predominantly African American Enrollment" and that "the Monitor has found that facilities disparities such as 'poor wiring or outdated equipment' have left some schools 'literally drifting' in terms of their efforts to integrate computer technology into the educational program." (*Id.* at 19.) SFUSD flagged these concerns for the Court and for the state – "the District is concerned about these problems and agrees that they must be addressed" – and identified yet further concerns: "its [the District's] own analysis shows even more fundamental facilities problems that relate to issues of student assignment and inequitable transportation burdens." (*Id.*)

In fact, facilities problems at some San Francisco schools are so severe that the Consent Decree Monitor issued a special Supplemental Report regarding three schools in February 2001, in which the Monitor wrote:

Also, the principal reports serious concerns about health at the school [Malcolm X Elementary], related to the possibility of toxic waste and other emissions from current and former industrial operations in the area. She reports that both she and the students

are sick all the time, and that the faculty have had problems as well. A veteran Malcolm X teacher who spearheaded innovative computer-based activities at the school has come down with cancer, and this was mentioned in the same context. In addition, a fire department official who spent four straight days at the school reportedly became ill. We also note that Gloria R. Davis Middle School, which is located very close to Malcolm X, had to be relocated for health reasons until school site problems were addressed.

(Supplemental Report of Consent Decree Monitor Regarding McAteer, Golden Gate, and Malcolm X, NAACP v. SFUSD, available at <http://www.gseis.ucla.edu/courses/edlaw/supp-rept-2-01.htm>.)

Recognizing all of these concerns, SFUSD summarized its facilities problems in a five-year remediation plan it proposed in April 2001 and revised in January 2002:

At some SFUSD schools, the level of building maintenance and repair has been unacceptably low. Analysis has shown that, at least in some cases, poor maintenance conditions are found at schools with high African American and Latino enrollment compared to better conditions at schools with fewer African American and Latino students. Some SFUSD schools also have experienced pest infestations and other problems associated with inadequate ongoing maintenance and repair.

(Excellence for All: A Five-Year Comprehensive Plan to Achieve Educational Equity in San Francisco Unified School District For School Years 2001-02 Through 2005-06, at 64.)

Recent newspaper accounts from San Francisco corroborate the existence of serious maintenance issues in schools throughout the district.

Nine-year old Tiffani Evans hummed to herself as she took her seat at E.R. Taylor Elementary School in San Francisco. Her eyes fell on something moving a few inches from her right foot. She jumped. 'There was this big, humongous rat,' the pig-tailed girl said this week. 'It was trying to turn over and get out of the sticky trap. It scared me.' Horrified teachers said that rats have infested their Portola neighborhood schools for two years. Rodent excrement and urine stain classroom carpets and play areas.

But vermin is not all the teachers and students must contend with at Taylor Elementary. As a chilly thunderstorm drenched the city, the school had no heat - again. Children in coats tried to study. Teachers in wool gloves wrote clumsily on the blackboard. 'the lack of heat is as chronic a problem as rats,' said Paula Mack, the Library Technician. 'We call about the heat, but it takes three or four days before someone gets here to turn it on. Then it goes off again, said Mack, who had encased herself in thermal underwear, a turtleneck, a plush vest, and a wool coat. Still, her hands felt icy.

(Asimov, *San Francisco Chronicle*, Jan 27, 2001.)

Kids in [Redding Elementary] the three-story school on Pine Street near the Tenderloin sit in class in their winter coats. In the office, secretary Peggie Cleary wears long johns and several layers of clothing.

"I had one first-grader who wrote that he went home and fell asleep and missed dinner because he was so wiped out from the cold," first-grade teacher Evelyn Moy said.

* * *

"Believe it or not," [Mayor Willie] Brown said, "there are 10 or 11 schools in the same situation." Or at least experiencing heating problems.

* * *

But it's not just the heating that's a problem for the staffers and 319 children at Redding. Other headaches:

-- A leaking roof.

-- A sewer system that backs up in the rain.

-- Homeless people camping on the roof and clogging drain spouts with broken beer bottles.

-- A fire alarm system that is so old that it can't be shut off without calling in a school district electrician to silence it.

"They're fed up every time I have to have a fire drill." Lau said.

Then there are the wall scars, a sad hangover from a lead abatement study last year that went nowhere. The entire building was scraped and primed as part of the lead program – but then the money ran out, and everything has been in limbo ever since.

(Matier & Ross, *San Francisco Chronicle*, Dec. 6, 2001.)

E. West Contra Costa Unified School District

Immediate Intervention/Underperforming Schools Action Plans from the West Contra

Costa Unified School District again reflect the persistence of severe maintenance issues. For example, the action plan the district filed in 2000 for Grant Elementary School states:

Inadequate facility: Grant is housed within a decaying infrastructure, surrounded by fields of asphalt. The facilities are poorly maintained and may pose a health risk to students and staff. Not only are the facilities in poor condition, they are overcrowded. There is little space available for extra curricular activities, tutoring or mentoring session, or parent meetings, for example.

(DOE 00048241.) Likewise, the executive summary to the action plan the district filed that same year for Helms Middle School identified "[b]uildings . . . sorely in need of painting and repair" as one of the ten "problems preventing all children at Helms from achieving at high levels."

(DOE 00048352.) The body of the report provided further detail about the serious facilities problems in the school:

Facilities Issues:

Decaying infrastructure: Buildings at Helms are desperately in need of repair and painting. There are leaking roofs leaving mold and mildew in some of the classrooms and hallways, a potentially serious health hazard. While many of the classrooms themselves have been painted, the hallways, other classrooms and public areas are sorely in need of paint. Students and parents report that they would like to see grass, trees and flowers in place of at least some of the asphalt. As it stands, the school is not an inviting place for students or teachers.

* Poorly maintained facilities: Students, teachers and parents complained that the school is not clean or maintained. Prior to one meeting in the library, one of the evaluators vacuumed the carpet herself to assure a clean space for parents.

* Overcrowded facilities: The student population at Helms continues to grow, stretching the capacity of the school to accommodate more students. There are not enough classrooms for each teacher to meet individually with students in their own classroom, requiring some teachers to move from room to room as they teach.

(DOE 00048364.)

As desperate as the Helms action plan makes the school's facilities sound, the action plan appears to have understated the problems at the school. According to a February 2000 report from architects the school district hired, "[i]t is the opinion of Gale and CSS Architects that due to extensive deterioration of the glass block window system, there is potential for the entire sections of the glass block window system to fail and potentially fall into the hallways during an earthquake." (DT-WC 00520.) Moreover, the report "confirm[ed] the extent deteriorated facility conditions result[] from the existing failed roofing, glass block window and HVAC systems." (DT-WC 00520.) The report identified the following specific areas of facility deterioration:

--"[r]oof membrane plies have embrittled and gravel surfacing has eroded at many locations."

--"[o]ver the past several years extensive leakage has occurred through the glass block systems. Furthermore, glass block breakage has resulted in many unsatisfactory repairs."

--"[o]ngoing chronic roof and window leakage has resulted in extensive damage to other building components. Acoustic ceiling tile, underlying gypsum sheathing and fiberglass insulation are stained and are reported to be a source of mold and mildew problem. The District

has had reported several staff complaints stemming from interior air issues related to mold and mildew growth."

--"Roof mounted heating equipment on each of the various school structures is in deteriorated condition and requires replacement at the earliest opportunity. A total of six gas fired heating units have ongoing chronic maintenance problems primarily associated with advanced age. Rusted exterior components and corroded heat exchangers are frequent sources of operational failure. The existing units have obsolete energy management systems which results in wasteful operation and poor control of environments." (DT-WC 00520-21.)

Similarly, a May 2001 West Contra Costa Unified Facilities Report states that Helms "lack[s] . . . adequate restrooms due to age, general disrepair, and increased enrollment at the school," and that the restrooms require replacement of stalls, sinks, floors, and all equipment. The report further states that "ceiling tiles throughout site are in various states of disrepair and need to be repaired/replaced," that roof and skylights need "immediate" attention, and that "glass blocks throughout the school leak and must be repaired and replaced," that the "gymnasium floor needs to be refinished," that the "carpet throughout site is in various states of disrepair and needs to be replaced," and that interior and exterior walls need to be painted. (PLTF 1834-1835.)

Moreover, as the *Contra Costa Times* reported in January 2002:

The sky in this San Pablo school is, quite literally, falling. Ceiling tiles, burdened by water and age, have buckled and snapped in the two-story, green-tiled entryway that each morning greets 1,350 babbling pre-teens at Helms Middle School. One by one, the tiles have dropped, smacking the red tile floor below and leaving a gaping black hole overhead. "They fall whenever they fall," said principal Harriet MacLean, an outspoken woman who keeps a trash bin full of fallen tiles in a storage closet near her office. "One fell mid-day, and luckily it didn't hit anybody." There are hundreds of schools in California with a similar set of problems -- leaking roofs, inadequate heating, peeling paint, moldy wall cavities and chipping floor tiles. Some are overrun by vermin; others smell of urine or lack even a sliver of sunlight.

(Shire, State's Schools Crumbling, *Contra Costa Times*, January 14, 2002.)

F. Other School Districts

1. Earlimart Elementary School, Earlimart Elementary School District

According to the II/USP action plan prepared in 2000 for Earlimart Elementary School, [c]lassroom temperature was uncomfortable in one-third of the classrooms observed due to heat not working or thermostat being set too high. Numerous heating and air conditioning breakdowns were reported by teachers. Parents said that students are sent home when air conditioning doesn't work. Parents said that students are sometimes left outside in the morning. No bells were working, few intercoms were functioning and school needs paint and classroom furniture replacement. Lack of bells and working PA [Public Address system] may pose safety issues (fire, etc.). Without bells during yard duty, teachers use whistles to "freeze" students who are then slowly returned to their classrooms. Parents are concerned about the bathrooms at school

(DOE 00036883.)

2. Newport-Mesa Unified School District:

April Rizman shakes her head each morning when she has to put her 6-year-old on a bus to school in Newport Heights because the classrooms just a block away are overcrowded. And Jim Baldwin is appalled that there are 39 students in his daughter's first-grade class. ... For months, parents and teachers in Newport Beach have been protesting at school board meetings about overcrowded classrooms, supply shortages, cutbacks in programs for art, music and athletics as well as recent staff and teacher layoffs.

(Jodi Wilgoren, "Schools Get Poor Grades in Residents' Report Card, *Los Angeles Times*, Feb. 14, 1993.)

Termites ravage Ensign Intermediate School in Newport Beach [in Orange County]. When it rains, the library is off-limits because the roof and windows leak. At Costa Mesa High, the gymnasium floor is riddled with holes. Jagged metal snags locker-room users. In the new state-funded computer lab, ceiling tiles fall on students' heads. . . . [Members of the district's Facilities Advisory Committee] toured every classroom at every school with district staff. they worried about what they found – sewer backups, rusty drinking fountains and faulty electrical, plumbing, heating and air conditioning systems.

(Montagna, *Orange County Register*, Feb 29, 2000.)

3. Berkeley High School, Berkeley Unified School District

When Dale Revin accompanied his sons to Berkeley High School for back-to-school night this year, he was shocked at what he saw.

According to Revin, classrooms had no textbooks. One classroom had only 29 desks, even though there were 38 students. In the bathrooms, faucets were cracked and stall doors were falling off hinges. On the way home, parents were forced to maneuver their cars around a large construction site that has been obstructing the front of the school for the past nine months.

When I asked the teacher where the other students sat, she said that people stand around or sit on radiators," Revin told the Berkeley School Board at a meeting last week. 'I don't know how they can be expected to concentrate on studying when they don't even have places to sit.' . . . Bathrooms have cracked sinks and a few toilets without stalls. One school plumber is driving a truck donated by PG&E in 1970.

(Org, *Contra Costa Times*, Nov 2, 2001.)

4. Fremont Unified School District

On February 1, 2002 the *San Jose Mercury News* published an article about Fremont Unified School District's plans to pass a \$157.2 million bond for school facilities. Two citizen who support the proposed bond issue are quoted in the article:

"The school facilities in our district are pitiful," said Albert Wang, of CBC Community Involvement. "They are not only outdated and run-down, but also unsafe."

John Smith, the campaign strategist for Measure B, said he was perplexed by [bond opponent's] arguments.

"These people seem to think spending money on anything is wrong, even though they admit the schools are in desperate shape," he said.³³

5. Ripon Unified School District

Leaky roofs, foul-smelling portable classrooms, dripping faucets, dingy bathrooms. Storage closets double as offices, brownish paint peels from the outside walls. Windows let in winter cold. Welcome to Ripon High School. It's one of the top schools in the state for academics, but it lacks modern science labs or well-equipped home economics classrooms. * * *. When it was built 50 years ago, there were about 350 students. Now the school has 750, and it's still growing. 'When it rains, it leaks inside the classrooms,' said Crystal Cemban, a senior. 'I think everything needs to be repaired.

(Dugan, *Sacramento Bee*, Dec 12, 2001.)

6. Lynwood Unified School District

A 1987 *Los Angeles Times* article stated:

³³ When friends start calling schools in a better-than-average school district "desperate", "unsafe", and "pitiful" one starts to think the problem is more widespread and we are getting jaded to the reality of many schools.

"McCowan said that students [at Lynwood High School] were also protesting because there is no hot water in the gym for students to take showers, no heat in some classrooms and the auditorium, and the school lacks a cafeteria. 'Students have to stand outside and eat, even when its raining,' McCowan said."

(Harris, *Los Angeles Times*, Feb 19, 1987.)

a) Will Rogers Elementary School

The Immediate Intervention / Underperforming Schools Program (II/USP) Action Plan for Will Rogers Elementary School identifies numerous school-wide and district-wide barriers to student achievement. The district barriers identified in the plan include:

“the school is loaded to full capacity which causes stress on class compositions; there is difficulty in retaining teachers due to district salaries being lower than the county median; there is a lack of substitute teachers; it is difficult to retain teachers and recruit credentialed teachers; it is difficult to get approval for out of state teacher conferences; and several district policies and attitudes strongly affect teacher morale. While we agree that addressing professional issues will help teacher morale, there are also a significant number of district issues affecting teacher morale, which also need to be addressed. These issues include: the infrastructure at the Will Rogers School site (heating/ventilation and AC systems, sewage system, lighting, security, roof structure, rodent control, cleanliness and lack of lockable storage) needs a thorough examination and a bringing up to standards/codes. . . . Overcrowding at the school site impacts student transfers which results in interrupted instruction and lower student achievement.”

DOE 00039770-71. (Emphasis added.)

None of the district-wide issues regarding poor facilities and overcrowding mentioned in the plan are addressed in the school’s II/USP budget and proposed remedies to low student achievement.

DOE 00039788-92.

7. Pomona Unified School District

According to a 1995 GAO report:

In the Pomona, California, school district, the student body has increased 37% over the past ten years. Some schools must have five staggered lunch periods to accommodate all students. As a result of overcrowding, in one elementary school, students are housed in temporary buildings installed in 1948 that are unattractive, termite ridden, dark, and

under equipped with electrical outlets. The temporary buildings get very hot as well as very cold at times because of poor insulation.

(GAO, 1995.)

8. Mt. Diablo Unified School District

Teachers and students across the Mt. Diablo [Unified High S]chool [D]istrict make do in classrooms with inadequate electrical systems, phones that don't work, broken floor tiles and water-stained ceilings. They shiver in the winter and sweat in the summer. They can't use new computers that sit in storage because the building's wiring is too old to plug them in.

(Suzanne Pardington, Mt. Diablo Schools Are Counting on \$250 Million Measure to

Shore Up Aging Buildings, *Contra Costa Times*, March 2, 2002.)

9. El Sausal Middle School, Salinas Union High School District (2000)

"El Sausal Middle School was built in 1949. The school currently holds over 1,300 students. Staff efforts to beautify the campus through the addition of desert gardens between the classroom wings has improved the appearance of the campus, but the age and overall condition of the buildings creates impediments to creativity and innovation in the teaching learning process. * * *"

"Upgrades and deferred maintenance tasks are not planned in the near future. Deferred maintenance tasks are scheduled for as far as ten years out. The district has made numerous attempts to pass local bond measures; but, so far, attempts have been unsuccessful."

(DOE 00056519.)

10. Las Virgenes Unified School District

In 1997, the *Ventura County Star* reported that "[m]any of the [Las Virgenes Unified School] district's schools are operating with leaky roofs, backed-up toilets and faulty electrical and air-conditioning systems." (Kevin Smith, Las Virgenes Board Backs \$93 Million School Bond, *Ventura County Star*, July 1, 1997.) In 2002, the *Los Angeles Times* noted that "teachers at Lindero Canyon Middle School in Agoura Hills say they . . . fear that toxic mold, removed from the school two years ago, still lurks behind classroom walls and above ceilings and may be

causing various ailments, from migraines and burning eyes to respiratory problems." (David Pierson, *Danger Feared in Classroom Walls*, *Los Angeles Times*, Feb. 24, 2002.)

X. Conclusion

In these pages I have tried to present a perspective on the enormous and complex comprising California public schools. Many parts of this system justify pride and hope for the future. Thousands of dedicated teachers and other employees are making a difference, and the Legislature and Governor have committed great efforts to repairing the system.

But there is a persistent, unacceptable layer of schools that deliver an unequal and negative school experience. This report has described a small but significant group of schools with unusually poor conditions that actively impede the promised education of students attending those schools. Poor management is the most likely cause of schools in poor condition, but the entire system cannot ignore these conditions. Literally tens of thousands – if not hundreds of thousands – of students attend schools with dirty or broken bathrooms, poor ventilations, extreme heat or cold, poor lighting, significantly distracting noise, severe overcrowding, hazardous materials including lead based paint, and other conditions.

Unusually poor conditions exist in multiple school districts. Because this problem has statewide implications, because the system of public schools is overseen and funded by the state, and because the remedy of local responsibility has failed to eliminate problems over a span of decades, state-level intervention is needed. The problems have not been hidden; in fact, some have been described on the front pages of major newspapers. State agencies have investigated and reported these problems for many, many years. Ignorance is not a possible excuse here. Problems may be solved at a feasible cost using tools available to the state today.

The same interventions used today by the state for financial problems may be applied to facility problems. Clear standards together with monitoring efforts can quickly and permanently eliminate this stain on California's school system with minimal intrusion on well-run schools. A few schools have fallen into disrepair and dirty conditions. No schoolchild should be required to attend such a school.

The people of this state deserve to know that minimal standards exist and are enforced. It is shocking, even incredible, that children attend run-down schools with dirty bathrooms literally blocks from the opulent offices of downtown Los Angeles, Oakland, and San Francisco.

These three school systems are not alone, which is precisely why state intervention is required. Intervention is needed now, as kids lose every day changes are put off. Improvements can be made quickly even if some fixes will take time. There is no excuse for dirty bathrooms in a school. No applications or matching fund requirements block cleaning and supplying towels and toilet paper.

When Mayor Willie Brown discovered the freezing conditions in a San Francisco classroom, repairs were made within a week. Why does it take a celebrity to get the furnace fixed? A statewide system is needed because we can't – and shouldn't – rely on mayors, newspapers, and others to ensure minimum standards for every school child in this state.

APPENDIX A

PUBLISHED REPORTS AND REFERENCES

Cases

50 year old schools.....	51
AB 16	64
AB 2223.....	16
Abend, Maryland State Dept. of Education, 2001.....	42
Addressing the K-12 School Maintenance Problem.....	12
approved tract maps.....	48
Asimov, <i>San Francisco Chronicle</i> , Jan 27, 2001.....	85
Benjamin Franklin High School.....	73
Berkeley High School.....	89
Brooks letter.....	30
Brooks, 2001.....	31, 37
Brown, Mayor Willie.....	86, 94
Calif. Department of Education web site, Facilities page.....	42
Calif. State Auditor, 1990.....	55
California Planning & Development Report, June 2002.....	47
California Research Bureau, 1999.....	51
California State Auditor, 1990.....	21
California's School Facilities Predicament.....	12
Cesar Chavez Elementary School (San Francisco).....	83
Clark-Thomas deposition, 183-184.....	33
Class Size Reduction Program.....	41
<u>Committing to the Cost of Ownership</u> , National Academy Press, 1990.....	71
<i>Contra Costa Times</i> , Jan. 7, 2002.....	37
<i>Contra Costa Times</i> , January 14, 2002.....	88
<i>Contra Costa Times</i> , March 2, 2002.....	92
<i>Contra Costa Times</i> , Nov. 2, 2001.....	25
County Offices of Education.....	28
Cox Elementary School.....	39
Critical Hardship Program (Deferred Maintenance).....	58
Critically Overcrowded Schools.....	64
CSS Architects.....	87
Deferred Maintenance Handbook.....	61
Deferred Maintenance program.....	56
Deferred Maintenance Program – 2000/2001 Fiscal Year, State Allocation Board Meeting, April 3, 2002.....	59, 71
Dept. of Education, 000-45.....	30
DOE 00031105 Oakland (Garfield).....	78
DOE 00036883 (Earlimart).....	89
DOE 00046968 Oakland (Stonehurst).....	79
DOE 00046989 (Oakland (Stonehurst).....	79
DOE 00046991 (Oakland (Stonehurst 2).....	79
DOE 00046994; DOE 00046999 Oakland (Stonehurst 3).....	79
DOE 00048241 WCCUSD (Grant).....	86
DOE 00048352 WCCUSD (Helms).....	87
DOE 00048364 WCCUSD (Helms).....	87
DOE 00056519 (Salinas Union High SD).....	92
DOE 23201 (Oakland Unified SD).....	78
DOE 46955-47049 (Stonehurst (Oakland) II/USP).....	32
DT-WC 00520 WCCUSD.....	87

DT-WC 00520-21 WCCUSD.....	88
Dugan, <i>Sacramento Bee</i> , Dec 12, 2001.....	90
E.R. Taylor Elementary School (San Francisco).....	85
Earlimart Elementary School.....	89
EdSource, 1998.....	12, 17
Education Code 17331.....	38
El Sausal Middle School.....	92
Ensign Intermediate School.....	89
Excellence for All: A Five-Year Comprehensive Plan to Achieve Educational Equity in San Francisco Unified School District For School Years 2001-02 Through 2005-06.....	85
'Excess Repayments.....	56
FCMAT 0116.....	77
FCMAT 2883.....	77
FCMAT 3414.....	77
FCMAT 3452.....	55
FCMAT 3523.....	77
FCMAT 4475 Compton.....	82
FCMAT 5303 Compton.....	82
FCMAT 5317.....	83
FCMAT Compton Facilities Management Introduction, page v.....	82
FCMAT, Henry, 2001.....	43
Federal Emergency Management Agency.....	28
Finance and Facilities Working Group, Joint Committee to Develop a Master Plan for Education, 2002.....	35
Finance and Facilities Working Group, Joint Committee to Develop a Master Plan for Education, 2002.....	33
Five Year Maintenance Plans.....	56
Fremont High School (Los Angeles).....	74
Fremont High School (Oakland).....	77
Fremont Unified School District.....	90
Gale Construction Management.....	87
GAO, 1995 (Pomona).....	92
GAO, 1996.....	6
Gardner Elementary School.....	72
Garfield Elementary School (Oakland).....	78
<i>Get On The Bus Tour</i>	77
Government Code section 53094.....	37
Grant Elementary School (Richmond).....	86
Grant High School (Los Angeles).....	73
Greene, Senator Leroy (ret.).....	49
Grot et al, <u>Air Change Rates in Non-residential Buildings in California</u> , 1995.....	15
Guthrie, <i>San Francisco Examiner</i> , Feb. 22, 2000.....	17
Hardship-eligible districts.....	50
Harris, 2002.....	10
Harris, <i>Los Angeles Times</i> , Feb 19, 1987.....	91
Helms Middle School WCCUSD (Helms).....	86
If it ain't monitored, it's optional.....	35
Jefferson High School (Los Angeles).....	74
Joint Legislative Committee to Develop a Master Plan for Education.....	53
Kamala Elementary School.....	63
Kerr, <i>Sacramento Bee</i> , Aug. 21, 2001.....	6
<i>L.A. Daily News</i> , March 26, 2002.....	75
Lange deposition.....	38
LAO, 1997.....	13
LAO, 2001.....	6, 51

Lazear Elementary School (Oakland)	77
Lead Hazards in California's Public Elementary Schools and Child Care Facilities	13
Legislative Analysts Office, 1997	57
Legislative Analysts Office, 1997	58
Legislative Analysts Office, 1998	61
Legislative Findings at Ed Code 17584.1.)	57
Lindero Canyon Middle School	92
Little Hoover Commission, 1992	12
Little Hoover Commission, 1999	23, 75
Little Hoover Commission, 2000	31
Little Hoover Commission, <u>A Study of the Utilization of Public School Facilities (Grades K through 12)</u> (1978)	22
Little Hoover Commission, July 1978	11
Little Hoover Commission, June 1981	12, 22
Little Hoover Commission, <u>The Los Angeles Unified School District</u> , 1981	22
Los Angeles County Office of Education, Report of Priority Corrective Actions for the Compton Unified School District (1993)	80
<i>Los Angeles Daily News</i> , Feb. 10, 2002	75
<i>Los Angeles Times</i> , 2001	23
<i>Los Angeles Times</i> , Feb. 14, 1993	89
<i>Los Angeles Times</i> , Feb. 24, 2002	93
<i>Los Angeles Times</i> , Feb. 9, 1998	75
<i>Los Angeles Times</i> , Jan. 5, 1992	73
<i>Los Angeles Times</i> , January 15, 1988	80
<i>Los Angeles Times</i> , January 19, 1998	74
<i>Los Angeles Times</i> , July 10, 1985	72
<i>Los Angeles Times</i> , June 19, 2002	76
<i>Los Angeles Times</i> , May 1, 2002	36
<i>Los Angeles Times</i> , Oct. 23, 1988	73
<i>Los Angeles Times</i> , October 4, 1996	74
Lynwood High School	91
Matier & Ross, <i>San Francisco Chronicle</i> , Dec. 6, 2001	86
McCord, 2001	44
Montagna, <i>Orange County Register</i> , Feb 29, 2000	89
Multi Track Year-Round Schools	62
NAACP v. SFUSD	84
Operational Grant program	63
OPSC web site	50
opulent offices	94
Org, <i>Contra Costa Times</i> , Nov 2, 2001	90
Peters, Tom In Search of Excellence, 1982	1
PLTF 1834-1835 WCCUSD	88
Pomona Unified School District	91
Proposed 2002 and 2004 Bond Allocations	65
Redding Elementary	86
Ripon High School	90
SAB agenda report, March 2002	70
<i>Sacramento Bee</i> , February 20, 2002	36
<i>Sacramento Bee</i> , June 16, 2002	25
<i>Sacramento Bee</i> , March 29, 2002	70
<i>San Francisco Chronicle</i> , 2001	24
<i>San Francisco Chronicle</i> , August 7, 1995	76
<i>San Francisco Chronicle</i> , May 20, 1995	77
<i>San Francisco Chronicle</i> , Nov. 16, 1992	83
<i>San Francisco Chronicle</i> , October 27, 1994	76

School Facilities: America's School Report Differing Conditions	15
Schwilke, Dr. Harry	45
SF 03026	11
SF 03036	11
SF 03083	83
Smith, <i>Los Angeles Times</i> , Nov. 9, 1994.....	73, 80, 82
State Department of Education/Superintendent of Public Instruction, Progress Report on the Compton Unified School District, February 18, 1997.....	81
Stonehurst Elementary School (Oakland)	78
Supplemental Report of Consent Decree Monitor Regarding McAteer, Golden Gate, and Malcolm X, NAACP v. SFUSD	85
To Build a Better School	30