

EXPERT REPORT OF DR. NANCY R. MYERS, ED.D, REFP

INTRODUCTION

A. Qualifications

1. I am a career educational facility planner and President of The Myers Group, where I have worked since the Group's formation in 1989. I have also served as the President of the Council of Educational Facilities Planners, International (CEFPI), the premier organization in the world for educational facilities planning. I have served on the board of CEFPI for 10 years. I also teach the graduate course in facilities at Indiana University in Bloomington.

2. During my career as an educational facility planner, I have had the opportunity to work in more than 30 states, Canada and Australia in the area of Educational Facilities Planning. I have been responsible for more than 400 projects related to master planning, establishing educational vision, staff development projects, writing educational specifications, working with design professionals to ensure that the integrity of the educational program is being articulated in the design and working with the ongoing maintenance and operations of school personnel. I have spoken at more than 100 conferences, and written over 40 articles and or manuscripts. A full listing of my publications and activities is included in my curriculum vitae, which is Exhibit A to the declaration to which this report is appended.

3. My forthcoming publications will include a Facilities Planning manual, which I am in the initial stages of writing. An integral part of the book will be the importance of Maintenance and Operations of facilities.

4. My educational background is in the field of Special Education. I am a Speech Therapist and my advanced degrees are in the area of Administrative Studies and Leadership. While working on my doctorate at Indiana University in Bloomington, I had the opportunity to serve as a graduate assistant with the facility team at Indiana. For two years, I worked with the team in evaluating educational facilities across the country and participated in many programs relating to the renewal of educational facilities.

5. When I completed my doctorate, I chose to continue my involvement in the Facility Planning field and worked as an educational facility planner for 10 years with one of the largest architectural firms in Indiana.

6. My current work at The Myers Group, where I work while teaching and researching at Indiana University, includes working with several very large school districts in implementing successful bond referendums. In 1995, I was chosen as the Planner of the Year by CEFPI.

7. I have testified before the state legislature in Indiana, where I spoke to the need for facility guidelines and standards for the state.

8. My customary consulting fee is \$90 per hour.

9. I am available to testify at deposition and at trial.

B. Scope of Assignment

10. I was asked by the plaintiffs in the Williams case to opine on the range of solutions available and utilized by states other than California to address the long-term planning, maintenance, supervision, and operation of school facilities.

11. To formulate my opinions, I conducted a multistate survey, gathering information from more than 30 states, Canada and Australia. Since I have made many national connections through CEFPI over the past twenty years, I contacted those experts to begin my search. Through emails, a short email survey, phone conversations, personal interviews, visits to school sites, participation in on site inspections, and extensive additional research, I gathered a vast amount of data from which, along with other work I have done, I formulated the opinions expressed in this report.

C. Summary of Opinions

12. Based on my research and experience in the field, I have reached several conclusions:

(a) There needs to be a clearly defined organizational structure which incorporates a partnership between State and local district authorities, and encompasses all educational facility projects under the same umbrella.

(b) The state needs to establish both an initial and an ongoing data-gathering mechanism to identify all of the facilities within the state of California. The initial inventory will begin to provide a prioritization of need and can establish a fair and equitable means to allocate financial resources. The ongoing

inventory will provide information necessary to evaluate in what schools, if any, conditions are unsafe, unhealthy, or educationally inappropriate.

(c) There also need to be standards imposed at the state level for the maintenance of school facilities and a state compliance program with a regularized inspection regime, which will focus on ensuring health and safety as well as educational appropriateness of school facilities.

(d) There needs to be a fair and equitable procedure for the State to award facilities dollars to districts.

13. In various portions of this report, I refer with approval to standards or procedures used in other states. In so doing, I am not contending that the states I mentioned necessarily have all the components of a successful school facilities program in place. However, the examples I refer to are illustrative of exemplary components of a successful program.

14. There is no single formula for success in this field. From the range of options that other states have adopted, California may confront and overcome its problems in a variety of ways. A variety of means to further the objectives can be combined to create a more adequate environment in California for maintenance and operation of its educational facilities.

II. State-Local Partnership

15. Those states that appear to be most successful in providing an equitable, long-term solution for facility maintenance have one major thing in common: there is a partnership between the state and the local district with very clearly defined standards and operating procedures. For instance, in New Mexico, when a School District is receiving state or local funding to assist with a facility project that is either a new or renovated facility, guidelines have been established to include ongoing maintenance and operations of those facilities and those dollars must be included within the facility project. As the Facilities Director from Albuquerque Public Schools stated, “The State of New Mexico is realizing that in order to be fiscally responsible with facilities dollars, the ongoing maintenance and operations of the facilities is essential. To that end, money must be allocated in the bonding dollars to ensure that those facilities will be maintained on an ongoing basis. (Conversation with Richard Herrera). In the

state of Illinois, a partnership has been created between the state, the Educational Service Regions (regional state offices tasked with the responsibility for, among other tasks, school facilities) and the local districts to inspect each school each year.

16. In addition to establishing a partnership, there needs to be an organizational structure established to allow local school districts the opportunity to become responsible for their facilities. This process can, for example, ensure that a formula for equity throughout the State is workable. In the State of Maryland, a very well defined organizational structure has been established whereby the local school District provides a maintenance plan to the State and the local District updates their plan each year. The state uses the plan to establish facility priorities based on the “adjusted” age of facilities and needs of each school. The process for awarding financial assistance is a very open one where need is determined by an objective “point” system assuring all school districts that a fair and equitable distribution of funds occurs.

17. Given the fact that the State of California is unique in that the number of schools this would impact is larger than any other State, perhaps consideration should be given to establishing a state, regional and local partnership as the process is being established.

18. Several officials in California, including Mr. Brooks and Ms. Lange of the Department of Education, and Mr. Henry of the Fiscal Crisis Management Assistance Team (FCMAT), have identified problems with deteriorated and inappropriate school facilities, as well as revealing that there is no comprehensive system of state oversight to address these problems. See Brooks, Henry and Lange depositions. The issue remains that there is no current system in place to ensure that all educational facilities in the State of California are safe, provide a healthy environment and are educationally appropriate.

19. In particular, there is no inventory of the age and condition of school facilities in the State of California. (Brooks Depo 335). There are few specific standards that govern the condition of school facilities after they are completed. (DOE 00044-48). Moreover, the State has taken the position that it has no responsibility for ensuring that school facilities are well-maintained. (DOE 00044-48).

20. FCMAT has the potential of being an organization that could assist with the maintenance and operations programs for the State, but they need more power and authority as well as financial resources. Currently, there are two ways for FCMAT to get involved with local districts. One is through the State Legislature requesting their assistance with a district in crisis and the second it by the local school District asking for assistance. To date, FCMAT has worked with only a small number of districts on facilities issues; most of their work has been with districts in financial crisis or districts that have requested management assistance. To date, FCMAT has conducted comprehensive facilities reviews in only three school districts, Oakland, West Contra Costa, and Compton on the directive of the Legislature, and in only two of those districts did FCMAT make follow-up visits. Since FCMAT's charter is defined by the Legislature, unless a district specifically invites their assistance, FCMAT's work in Oakland did not include follow-up work with the district after the initial evaluation of the facilities and recommendations. In the districts where follow-up visits were invited and did occur, FCMAT had no power or authority or financial resources to truly assist the district, or enforce the implementation of its recommendations. (Henry Depo. 93, 94).

21. The School Facilities Planning Division of the Department of Education currently is charged with reviewing school district plans for all of the funding streams related to new construction but have minimal involvement in what is happening in local districts after the school has been constructed. The School Facilities Planning Division has minimal if any involvement with the ongoing maintenance and operations of facilities. In addition, the School Facilities Planning Division does not have the power or resources to assist in any significant way, even if it becomes aware that a district has facilities that pose health and safety risks or have become educationally inappropriate. (Brooks Depo., 334).

22. It is interesting to note that in the report from the Facilities and Facilities Working Group of the Joint Committee to Develop a Master Plan for Education- Kindergarten through University, dated March 2002, the Working Group suggests the importance of the state and local partnership in the development and maintenance of adequate and appropriate facilities.

III. Data Gathering Mechanisms.

23. Once a partnership has been established and an organizational structure has been defined, then the State needs to begin the identification process. In order for the governing bodies to begin to administer a facilities and maintenance program, they must first establish a process to identify the condition of all the facilities in California. Once this data-gathering process has been started, then a plan can be established as to the most equitable approach to addressing all of the needs. The ultimate goal would be to identify every facility in the State of California by its square footage age, its renovations and or additions and its educational appropriateness. This will be a very daunting task given the large number of schools in the State. However, there are alternatives to a full-scale facility survey that could achieve the outcome of identification of the facilities that need the most attention initially.

24. Adapting the model that is used in Maryland, all local school Districts would be responsible for completing a school facility survey which would require them to identify all of the square footage in all of their facilities by construction age. If the facility or portions of the facility had been remodeled or renovated at some point, then through established criteria, the renovated square footage would receive an “adjusted” age. Through this simple data gathering system, the State could identify all of the facilities within the State based on age of square footage and begin to establish a database for prioritizing financial resources which need to be expended to address the facility needs. Age is not the sole determining factor of need; it can be a key indicator, especially in making an initial assessment of statewide needs. As I explain below, Maryland uses this system as an initial step, but has a subsequent process to assess conditions of school facilities beyond their age.

25. This initial survey is not suggested to replace the need for an ongoing maintenance plan for each facility and perhaps a more in-depth analysis of the needs of all of the facilities throughout the State. As the standards for facilities are being developed, a process could be established utilizing the standards to provide an instrument to formally evaluate each facility either at the local level or in partnership with the State.

IV. Standards and Inspections

26. In addition to establishing an organizational structure which suggests a local and State partnership and developing a system for identifying the facility needs in the State of California, there must also be an inspection process established as well as minimum facility standards defined in order to provide an accountability system both for the local district as well as for the State.

27. These standards should include health and safety standards, recommendations for ongoing maintenance and operations functions, appropriate guidelines to address the educational appropriateness of the facility and guidelines for allocation of financial resources to ensure ongoing maintenance and operations. An example of such a financial resources guideline would be establishing a percentage of the replacement value of the facility that must be set aside for annual ongoing maintenance.

28. In the State of West Virginia, standardized forms have been established to evaluate school facilities and for the onsite visit made by the State Building Authority when inspecting each school building. The School Facilities Evaluation checklist addresses such things as size of educational spaces (with guidelines for recommended sizes) and provides, as one example, that classrooms for first through eighth grades are adequate at 28 to 30 square feet per child.

(Appendix).

29. In the State of Maryland, the onsite inspection addresses health and safety issues as well as educational appropriateness. A rating scale is given for such things as: windows and caulking, equipment on roof, condition of roof, fire and safety equipment, boilers/water heaters, steam distribution, plumbing, air conditioning and capacity of building and number of students within the building. Each area in the inspection survey receives a superior, very good, good, fair, poor or NA rating. There is a multiplier attached to each of these areas and an overall rating is given to each facility. Again, this provides a standardized system for inspection with an objective rating attached to each facility.

30. The inspection report is sent to the school district and the district has a 30-day period in which to respond in writing as to how they plan to address the areas identified as

needing attention. If they do not respond in the time allocated or if they do not provide a plan, there is the potential for the district to lose State aid out of their general budget.

31. Once the standards have been established then a comprehensive maintenance plan needs to be completed and updated annually. For instance, in Maryland, a comprehensive maintenance plan must be established by each District and updated annually. On-site inspections of every facility in Maryland occurs randomly on a rotating basis by the Board of Public Works and the Interagency Committee on Public School Construction. In general, the inspection process results in every school in smaller districts being inspected every five years while it will take approximately 8-12 years for every school in the largest districts to be inspected. If, however, a school receives an evaluation of “poor” on an inspection, an inspector returns the following year to check up on whether the problems that caused the school to receive a poor evaluation are being addressed.

32. In order to ensure compliance, the State of Maryland has established a system whereby all districts will be held accountable. In order for a district to receive funding from the State to address their school facility construction needs, there must be a comprehensive plan established with a yearly updated plan submitted as well as there also must be funds allocated in the general budget for maintenance and operations of existing facilities. When a district is requesting financial assistance for facilities, the general budget is reviewed to ensure that dollars have been allocated for maintenance and operation as a line item budget consistently over the past few years.

33. In the State of New York, regulations were amended in 1999 addressing, among other things, the need for a comprehensive long-range plan pertaining to educational facilities. A building survey must be conducted once every five years by the State, an annual fire inspection must be completed and an annual visual survey must be conducted in years when no building survey is being conducted.

34. Another area which needs to be addressed is the need for financial resources to be allocated in the general budget for ongoing maintenance and operations. The general consensus of the experts in the field is that there is a recommended percentage of dollars that should be

included in the general budget to address ongoing maintenance and operations. The recommended percentage to be budgeted for maintenance and operations is 2-4% of the replacement value of each facility. (National Research Council, 1990). Currently, there is a bill in the legislature in Idaho that would require Districts to set aside 1 1/2% of the replacement value of all of their facilities into a special fund to be used only for maintenance. In Ohio, when new facilities are constructed, there has to be a percentage of the general funds set aside for maintenance and operations. In Ontario, budgetary minimums for maintenance and operations are established for each school board in the province at virtually the same rate. The rate is established on a square footage of all of their building stock and are funded accordingly to maintain the properties. The funding is established on a yearly basis, therefore each Board can plan and finance the improvements across the Board with the knowledge that every year, as long as the pupil load does not decrease, they will receive the same amount of money. The Board can then apply it to whichever properties need the funding. However, the maintenance and operations cannot be transferred to capital expenditures, nor can capital funding be transferred to maintenance and operations.

35. In the State of West Virginia, a comprehensive maintenance plan must be established by each district and updated annually. On site inspections occur as it relates to new and/or renovated construction. Dollars are to be included within the local district budget to maintain and operate facilities and once again, there is an accountability component built in that ties directly to state funding. One of the ways that School Districts are held accountable is through the State reporting procedures required by each District. In the School budgets that are submitted to the State for approval there is a line item for maintenance and operations of schools. There are not requirements as to how many dollars must be included but there must be a recognition of the need for dollars spent on facilities and a history through investigation of prior budgets with the District that this has been a priority. When a District is requesting funding from the State to assist with a facility project, the Department of Facilities will review budgets from the School District to ensure that they have been complying with the requirement to include

dollars for maintenance and operations in their budgets. If they have not, then funding may be denied.

36. Maintenance and operations of school facilities is an ongoing process and a system for standards and inspections needs to be in place to ensure that the ongoing maintenance will continue to occur for the life of the building. If you don't have a system of checks and balances in place with specific standards and guidelines to follow then the likelihood of facilities becoming a low priority in terms of funding is great. Most often this is not intentional but rather is based on limited resources and prioritizing is often related to the "voices" speaking on behalf of all the dollars needed to operate a school District. Typically, there are only a few "voices" that view the maintenance and operations of facilities as a priority and dollars are redirected to what is often seen as "direct" services for students.

37. This ongoing maintenance and operations program can be very successful but it will take time, a well-thought-out process with accountability measures tied to funding embedded in the process as well as resources both human and financial.

38. My recommendations for establishment of a system of standards, inspections, and means to ensure districts keep facilities up to standards are consistent with the recommendations in the recent report from the Finance and Facilities Working Group of the Joint Committee to Develop a Master Plan for Education. That report provided 5 major school facility policy areas and establishing standards and accountability was one of the 5 mentioned. ("Recommendation 5.4: Establish clear, concise and workable standards that are characteristic of facilities that provide a high quality/high performance teaching and learning environment.").

39. The Finance and Facilities Working Group recommended that districts be required to adopt a facilities plan to satisfy or exceed state facilities standards. The Working Group also recommended that an agency such as the county office of education, or some other "intermediate agency," monitor the district's compliance with its master plan and take appropriate intervention measures where the district is not meeting state facilities standards. "Failure of districts in making assessments, creating plans to address deficiencies or failure to make progress toward established [facilities] standards may warrant direct intervention by a county office of education

or other agencies. The intervention may also include continuing monitoring, commenting and direct management assistance, the creation of an alternative school repair and/or construction program, state assumption of local board authority and the use by intermediate agencies or the state of statutorily authorized emergency powers to expedite the correction of unsafe or sub-standard facilities to be paid for by emergency loans if necessary.” (Working Group Report, 46-47).

V. Equitable Funding.

40. Once the State has established an organizational structure, a mechanism for identifying the needs, established facility standards and guidelines for educational appropriateness including an ongoing inspection process as well as standards or guidelines for the financial resources that need to be allocated in the district general budget, then there must be a system to address equitable funding. By equity, I mean that funds are allocated so that the greatest needs are addressed first.

41. It is my understanding that in the State of California there is not a system established whereby the oldest square footage in the state (or the schools in the worst condition) is addressed first regardless of location within the State. It appears that allocation is generally made on a first come, first serve basis and those districts with a savvy staff are more likely to obtain the dollars needed for new construction and modernization. Those districts that are operating with a very small, multipurpose staff do not have the time and/or resources to commit to chasing the dollars and are often left out completely in any state and/or federal aid. Again, through a process similar to that cited in the State of Maryland, objective criteria could be established increasing the opportunity for more equitable funding.

42. Another related problem is that unless a school district has a person hired on the staff to “chase” state funding, there is little hope that local districts will be given dollars to assist with maintenance issues within their district. Persons who work within the state of California who, in some cases, have been hired specifically to “chase” state dollars as their primary job responsibility have shared this insight. Once a data-gathering system is in place, the State will be able to identify the districts which have the greatest needs.

43. In the context of new construction, an equitable funding system could be established similar to that utilized by the State of Ohio. Every school facility in every School District in the State was evaluated by a team of architects and engineers employed by the State to establish, among other things a ranking as to the Districts with the most facility needs. Other factors were addressed in determining the priority ranking for the State including the District's financial circumstances and "ability" to fund new and or renovated facilities based on the demographics of the community and the "wealth" index. Utilizing a series of objective data gathering instruments including facility evaluations, demographic studies and financial ability of the District, a prioritization of all School Districts in the State of Ohio has been determined. Then, as dollars are allocated for each District, there are done so based on the greatest need first.

44. The funding system should not be based totally on providing dollars to only those districts that apply, either on a first come first served basis or on the application process alone. Once a data-gathering system has been established, then the State, working with the local Districts can identify and prioritize those districts and specifically the buildings that are top priorities for funding.

45. State funds for deferred maintenance in California are not allocated on a first come first serve basis. My understanding is that all those districts that apply receive some dollars but the amount is based on the amount of dollars available and that is divided among all applicants. However, the current system does not assure that deferred maintenance funds go to districts that have serious needs if they fail to apply for funds.

46. In addition, while California has included dollars in the budget for deferred maintenance, those monies have fluctuated over the years and thus maintenance continues to take a back seat in local budgets. Cal. Ed. Code § 17584.1 (legislative findings).

47. In deferring the maintenance, the problems do not remain static, they continue to increase and most often become much more costly. For instance, roof leaks, if not repaired not only require funding for the roof but also for all of the areas that have been damaged from the resultant water entering the building. As the first three of these findings state:

(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 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.

48. There is not only a problem with the deferred maintenance dollars but also with defining the ongoing maintenance issues versus deferred maintenance projects. The State provides some funding for deferred maintenance but does not assist financially with ongoing maintenance products. For some districts with limited resources, there may be an unconscious decision to wait and address maintenance items once they move from an ongoing maintenance item to a deferred maintenance item due to the extent of the work needed and thus receive at least some financial assistance to relieve the already underfunded needs within the district. LAO Report, 1997-98.

VI. Multiple Formulas For Success

49. All states confront maintenance and operations issues; the success or failure of a state in handling these issues depends on a variety of factors. Several states, including Maryland, West Virginia, Idaho and New Mexico have successfully chosen from the variety of options at hand to ensure that adequate statewide attention and resources were devoted to maintenance and operations of school facilities.

50. Most states recognize the need for a comprehensive maintenance plan and the need for dollars allocated to address the ongoing maintenance. How they effectively ensure that the facilities are being maintained and if they are, in reality, being maintained remains another issue. Several models have been presented in this information to provide guidelines that have been successful in other States. By working with some of the state officials in those states that have

established successful partnerships that address equitable funding mechanisms as well as clearly defined facility standards and inspection processes that provide guidelines for financial resources to ensure ongoing maintenance and operations of all facilities, California can address this complex problem in a systematic, well-thought-out and well-executed manner.

51. The issues of maintenance and operations are complex ones but have a variety of workable solutions. There needs to be a combination of the four components that have been discussed above tailored to meet the unique needs of California schools.

52. As a final note, the report that was presented in March, 2002 providing 5 policy areas which should be considered to develop and maintain adequate and appropriate educational facilities is consistent with the independent recommendations presented within this report.