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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

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

Plaintiffs,

v.

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

Defendants.

Case. No. 312236

[CLASS ACTION]

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION

Hearing Date: July 10, 2001

Time: 8:30 a.m.

Department: 16, Hall of Justice

Judge: Hon. Peter J. Busch

Date Action Filed: May 17, 2000

ENDORSED
FILED
San Francisco County Superior Court

MAR 28 2001

ALAN CARLSON
BY: KEVIN H. L...
Deputy Clerk

CALENDARED
MORRISON & FOERSTER

MAR 23 2001

FOR DATE(S) _____
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STATE OF CALIFORNIA,
Cross-Complainant,
v.
SAN FRANCISCO UNIFIED SCHOOL
DISTRICT, a school district, et al.
Cross-Defendants.

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1 **I. INTRODUCTION**

2 The Plaintiffs in this action attend public schools in the State of California in which they are
3 deprived of basic educational necessities. Along with thousands of similarly situated school children,
4 Plaintiffs are denied trained teachers, essential textbooks and other instructional materials, and are
5 forced to endure classroom conditions and facilities that shock the conscience. As a result, they are
6 prevented from obtaining the education guaranteed to them under the California Constitution. The
7 Defendants have violated their constitutional rights by failing to oversee and effectively supervise the
8 State's educational system.¹

9 To demonstrate that class certification is appropriate, we start with the Court's basic
10 observations about this case, articulated in denying the State's special demurrer:

11 The State of California has taken on itself through its Constitution, statutes, and regulations to
12 provide universal public education and to do so on a basis that satisfies basic standards of
13 equality, among other legal requirements. . . .

14 [T]his case is not about correcting the specific deficiencies suffered by these students at their
15 specific schools in their specific school districts. . . . Rather, as Plaintiffs represented to the
16 Court at the hearing on the demurrer, this case is exclusively about the State's system of
17 oversight and that system's alleged inadequacies and failures.

18 (Order, Nov. 14, 2000, at 1-2.)

19 Despite the State's attempts (including the demurrer and cross-complaints against certain
20 school districts) to deflect the focus of this case from what Plaintiffs have challenged, Plaintiffs have
21 framed this action so that issues of law and fact in common to students statewide clearly predominate
22 over individual issues. Plaintiffs seek injunctive relief only, against the State and its statewide
23 agencies only, and aimed at statewide oversight issues only. In the terms used by Code of Civil
24 Procedure section 382, there is a "community of interest" such that common questions predominate.

25 The proposed class comprises all students who are attending or will attend public elementary,
26 middle or secondary schools in California who are deprived of one or more specifically defined basic

27 ¹ During the merits phase of this action, Plaintiffs will prove that class members suffer such
28 fundamental educational disadvantages, as compared to most students in California public schools,
 and that they have a constitutional right to a remedy from the State under the equal protection
 guarantees of the State Constitution. *Butt v. State of California*, 4 Cal. 4th 668, 685 (1992).

1 educational necessities, which are set forth in Section II below. The proposed class definition is more
2 than sufficiently ascertainable.

3 This action is a prototypical case for class certification in accordance with the principles
4 behind Rule 23(b)(2) of the Federal Rules of Civil Procedure.² Plaintiffs seek broad injunctive relief
5 on behalf of a large class of persons deprived of their constitutional rights. As a result, their claims
6 are ideally suited for class certification as a (b)(2)-type action. Because Plaintiffs do not seek
7 damages, the difficult certification issues that arise in (b)(3) actions are absent here.

8 Class certification provides a manifestly superior procedural vehicle for this case. The denial
9 of equal educational opportunity to a specific student may be the result of a number of deficiencies,
10 but that does not preclude that student from seeking to remedy one of the causes of the deprivation --
11 the State's failure to acknowledge or perform its Constitutional obligation to exercise oversight so as
12 to prevent, or detect and correct, fundamental inequalities in public education. Class certification will
13 assist (indeed, require) the parties to focus on the common issues of the State's system of oversight as
14 it affects the deprivations that define membership in the class. This will enhance the manageability of
15 the case, which was one of the original objectives of the class certification device.

16 Certification of the class will also avoid repetitive litigation on identical issues and mootness
17 questions raised by graduation of the named Plaintiffs. Additionally, the class action form will
18 benefit the parties in applying the outcome of this case in subsequent actions. These benefits will
19 extend to the Defendants as well. "Whether it wins or loses on the merits, [a defendant] has a distinct
20 and personal interest in seeing the entire plaintiff class bound by res judicata." *Phillips Petroleum*
21 *Co. v. Shutts*, 472 U.S. 797, 805 (1985).

22 Plaintiffs and their counsel recognize the responsibility that class certification imposes. The
23 experience and ability of the legal team assembled to represent the class, and the resources that are
24 available to prosecute this case, assure adequate representation. This case presents issues of profound
25 public importance. The Supreme Court has recognized that "public policy . . . encourages the use of

26
27 ² California courts regularly look to FRCP 23 and case law interpreting it for guidance
28 concerning class certification under CCP § 382. See, e.g., *Linder v. Thrifty Oil*, 23 Cal. 4th 429,
437 (2000); *City of San Jose v. Superior Court*, 12 Cal. 3d 447, 453-54 (1974).

1 the class action device." *Richmond v. Dart Indus.*, 29 Cal. 3d 462, 473 (1981). This is a paradigm
2 case in which class treatment is appropriate.

3 **II. STATEMENT OF FACTS**

4 **A. The Relief Sought Is Statewide and Classwide in Scope**

5 Plaintiffs filed this action on May 17, 2000, alleging that the State has failed to establish a
6 system of oversight and management to ensure that students in public schools are afforded equal
7 access to basic educational necessities, including: 1) adequate numbers of trained teachers; 2)
8 textbooks and other basic instructional materials in class and to take home for homework; 3) safe,
9 healthful facilities; and 4) schools that are not so overcrowded that conditions interfere with their
10 ability to learn. The First Amended Complaint (the "Complaint" or "FAC"), includes 98 student-
11 Plaintiffs in 46 different schools. Plaintiffs seek not damages but declaratory relief and a permanent
12 injunction ordering the Defendants to maintain a system of oversight and management of the public
13 schools to ensure that students are not denied essentials of an education that are available to the
14 majority of students throughout the State. (*See* FAC ¶ 326.)

15 **B. Plaintiffs' Proposed Class Definition**

16 Plaintiffs propose certification of the following:

17 Class:

18 All students who are attending or will attend public elementary, middle or secondary schools
19 in California who suffer from one or more deprivations of basic educational necessities. The
20 specific deprivations are as follows:

21 A) a lack of instructional materials such that the student does not have his or her own
22 reasonably current textbook or educational materials, in useable condition, in each core
subject (1) to use in class without sharing with another student; or (2) to use at home each
evening for homework;

23 B) a lack of qualified teachers such that (1) the student attends a class or classes for which no
24 permanent teacher is assigned; or (2) the student attends a school in which more than 20% of
25 teachers do not have full, non-emergency teaching credentials; or (3) the student is an English
Language Learner ("ELL") and is assigned a teacher who has not been specially qualified by
the State to teach ELL students;

26 C) inadequate, unsafe and unhealthful school facilities such that (1) the student attends classes
27 in one or more rooms in which the temperature falls outside the 65-80 degrees Fahrenheit
28 range; or (2) the student attends classes in one or more rooms in which the ambient or external
noise levels regularly impede verbal communication between students and teachers; or (3)
there are insufficient numbers of clean, stocked and functioning toilets and bathrooms; or (4)

1 there are unsanitary and unhealthful conditions, including the presence of vermin, mildew or
2 rotting organic material;

3 D) a lack of educational resources such that (1) the school offers academic courses and
4 extracurricular offerings in which the student cannot participate without paying a fee or
obtaining a fee waiver; or (2) the school does not provide the student with access to research
materials necessary to satisfy course instruction, such as a library or the Internet; or

5 E) overcrowded schools such that (1) the student is subject to a year-round, multi-track
6 schedule that provides for fewer days of annual instruction than schools on a traditional
calendar provide; or (2) the student is bused excessive distances from his or her neighborhood
7 school; or (3) the student attends classes in one or more rooms that are so overcrowded that
there are insufficient seats for each enrolled student to have his or her own seat or where the
average square footage per student is less than 25 square feet.

8 Subclass:

9 All students who are attending or will attend public elementary, middle or secondary schools
10 in California who attend schools where a multitrack schedule provides for fewer days of
annual instruction than schools on a traditional calendar provide and/or where students are
11 bused excessive distances and travel times to less crowded schools.

12 **C. Many Unnamed Class Members Suffer From the Same Deprivations That Deny**
13 **Educational Equality to the Class Representatives**

14 The class representatives, who attend schools that lack basic educational necessities, are
15 representative of other students throughout California who suffer similar deprivations.³ Their schools
16 are characterized by high percentages of uncredentialed teachers, a lack of textbooks or other basic
17 instructional materials, and inadequate, unsafe, unhealthful or overcrowded facilities.

18 **1. Teachers**

19 The lack of fully trained teachers who are available to teach the named Plaintiffs and those
20 similarly situated is a pervasive statewide problem, and one that is growing in severity. In December
21 2000, a non-partisan report on the status of the public school teaching force in California concluded
22 that "nearly one in every seven California classrooms [is] taught by an individual without even the
23 minimum qualifications."⁴ Relying on the Department of Education's CBEDS database, the report
24 notes that last year:

25 ³ The 15 proposed class representatives are: Moises Canel, Manuel V. Ortiz, Glauz Diego,
26 Carlos Santos, D'Andre and Delwin Lampkin, Kristal Ruiz, Samuel and Jonathan Tellechea, Carlos
27 and Richard Ramirez, Lizette Ruiz, Silas Moultrie, Theresa Ensminger and Alondra Sharae Jones.
Plaintiffs submit concurrently herewith declarations of each of these students.

28 ⁴ The Center for the Future of Teaching and Learning, *Teaching and California's Future:
The Status of the Teaching Profession 2000--An Update to the Teaching and California's Future*

1 24% of California schools had 20% or more underqualified teachers, up from 21% in 1998-99
2 and 20% in 1997-98. This most critically affected subset includes over 1,600 schools, which
enroll over 1.5 million children in total.

3 (*Id.* at 37.) According to the California Department of Education's website, there are 100 schools in
4 California in which 50% or more of the teachers are uncredentialed. In some cases, the number is as
5 high as 87%. (Press Dec. ¶ 4 and Ex. C; *see also* FAC ¶ 275.) This concentration is "not limited to a
6 few large districts." (*California's Future* at 38, Press Dec., Ex. B.) Instead, "14%, or almost one in
7 every seven California school districts have 20% or more underqualified teachers -- up from 12% in
8 the previous two years." (*Id.*) Moreover, schools with the highest percentages of poor children and
9 children of color "continue to have the highest percentages of underqualified teachers." (*Id.* at 41.)⁵

10 Many of the representative Plaintiffs are forced to attend schools that have high percentages of
11 underqualified teachers. For example, Plaintiff Carlos Santos attends Edison-McNair Academy,
12 where 64% of the teachers lack full, non-emergency teaching credentials, and Plaintiff Kristal Ruiz
13 attends Cesar Chavez Academy, where 50% of the teachers lack full teaching credentials.⁶ Class
14 representatives also attend classes where no regular teacher is assigned, or where they receive
15 instruction from a series of rotating substitutes or from no teacher at all. Alondra Jones, for example,
16 has attended several classes at Balboa High that lacked a permanent teacher. Instead, she has
17 received instruction from substitutes who rotated on a daily or weekly basis. (Alondra Jones Dec. ¶¶
18 12-13.)⁷

19 *Task Force* (December 2000) (hereinafter, "*California's Future*,") at 3, Ex. B to the concurrently
20 filed Declaration of Anthony L. Press ("Press Dec."). The Center's report defines
21 "underqualified" teachers as those on emergency permits, waivers, and still in intern or pre-
intern programs. (*Id.* at 35-36.)

22 ⁵ Schools in which 75% or more of the students received a free or reduced-price lunch (a
23 proxy for the poverty level of the student population) have, on average, 22% undercredentialed
24 teachers on staff, up from 21% in 1998-99 and 19% in 1997-98. (*California's Future* at 41,
Press Dec., Ex. B.) Schools with more than 90% students of color have, on average, 27%
undercredentialed teachers, a 2-4% increase over the prior two years. (*Id.* at 42.)

25 ⁶ Plaintiffs Moises Canel, Manuel Ortiz, Glauz Diego, D'Andre and Delwin Lampkin, Samuel
26 Tellechea and Silas Moultrie also attend schools where 20% or more of the teachers lack a full
27 teaching credential. (*See also* FAC ¶¶ 103, 115, 120, 129, 244, 258, 260 and 268 (identifying 17
other named plaintiffs who suffer from unreasonably high percentages of untrained teachers at their
schools)).

28 ⁷ Plaintiff Glauz Diego, who attends Fremont High School, did not have a permanent history
teacher last year. (Glauz Diego Dec. ¶ 8.) Plaintiffs D'Andre and Delwin Lampkin's school,

1 2. Instructional Materials

2 Thousands of California's children are being deprived of textbooks or instructional materials
3 essential to their education in core subjects.⁸ This intolerable situation has persisted for at least the
4 past five years. A 1995 survey by the Association of American Publishers ("AAP") and the National
5 Education Association revealed that one in four California teachers did not have sufficient textbooks
6 for their students. (*See* AAP School Division News (May 5, 1998), Press Dec., Ex. D) Half of the
7 teachers surveyed said that they were unable to assign homework because of the lack of textbooks,
8 and 80% reported spending their own money on classroom materials. (*Id.*)

9 The severity of the textbook shortage in California was described in a 1997 Los Angeles
10 Times Article (*Book Shortage Plagues L.A. Unified*, Press Dec., Ex. E), which reported that
11 California's textbook spending ranked 47th in the nation. The article noted that "[t]he problem
12 remains hidden because it is rarely quantified." (*Id.*)⁹ In July 2000, the Los Angeles Times reported
13 that in the LAUSD, "progress [was] uneven across the district and many students still go without
14 books in some classes or use worn, outdated texts." (*With State Checkbook Open, Some Students Still*
15 *Lack Texts* (July 16, 2000), Press Dec., Ex. F.)

16 Many of the representative Plaintiffs struggle to learn without access to textbooks or other
17 basic instructional materials. Representative Plaintiffs from Watsonville, John C. Fremont, Crenshaw
18 and Huntington Park high schools all complain of a lack of textbooks to use in their classes and to
19 take home for homework. (Manuel Ortiz Dec ¶¶ 3, 4; Glauz Diego Dec. ¶ 6; Delwin Lampkin Dec.

20
21 Crenshaw High School, does not have enough teachers to teach all of the classes in which students
22 are placed. (D'Andre Lampkin Dec. ¶¶ 4-5.) Other named Plaintiffs suffer similar deprivations (*see*,
23 *e.g.*, FAC ¶¶ 102, 105, 114, 193, 198, 228, 245 and 271).

24 ⁸ The State Legislature has declared that "to the extent that every pupil does not have access
25 to textbooks or instructional material in each subject, a pupil's right to equal educational opportunity
26 is impaired." *Education Instructional Materials Incentive Program*, 1994 Cal. Stat. 927, Sec. 1
27 (uncodified Section 1 to Cal. Educ. Code § 60177). The California Supreme Court has found that the
28 "authorities are virtually unanimous in characterizing textbooks as having a central place in the
educational mission of a school," noting that they have been referred to as a "basic educational tool"
and "the most essential tool of education." *California Teachers Ass'n v. Riles*, 29 Cal. 3d 794, 811
(1981) (citations omitted).

⁹ The article also cites the AAP's survey finding that a quarter of the teachers said their
students did not even have books to use in class. (*Id.*)

¶ 3; Lizette Ruiz Dec. ¶ 3.)¹⁰ These students are forced to share textbooks in class and prevented from taking textbooks home with them to study after school.¹¹ For every named Plaintiff in this case who complains of a lack of textbooks in useable condition, there are dozens of other unnamed class members who suffer the same deprivations in the same classes. Schools that the named Plaintiffs attend also lack educational resources such that students are charged fees to participate in required course work (*see, e.g.*, Theresa Ensminger Dec. ¶¶ 3, 5, 7). Sadly, while Defendants admit that “[t]he extent of the availability of educational materials in all districts is unknown,”¹² the deprivations Plaintiffs suffer recur throughout the State.

3. Facilities

Thousands of students throughout California attend school in unsafe, unhealthful and overcrowded facilities. As recently as April 2000, Governor Davis said:

Hundreds of thousands of our children are trying to learn in overcrowded, out-of-date, unsafe schoolrooms – or in temporary trailers stacked on what were once playgrounds. Our critical class-size-reduction programs simply won’t work if schools have no space.

(Letter from Gov. Davis to Fellow Democrat, Apr. 20, 2000, Press Dec., Ex. H.) EdSource, an impartial, non-profit organization concluded in its 1998 report, *California’s School Facilities Predicament* (hereinafter, “*Predicament*,”), that the “problem of school facilities [in California] has reached crisis proportions.” (*Predicament* at 1, Press Dec., Ex. I.) In some schools, “[e]ducators struggle to do their jobs and students struggle to concentrate in overcrowded, deteriorating buildings with inadequate heating, undependable plumbing, leaking roofs, and peeling paint.” (*Id.*) The report found that:

¹⁰ Plaintiffs Moises Canel, Alondra Jones and Kristal Ruiz also suffer from the unavailability of textbooks at their schools. (*See also* FAC ¶¶ 79, 87, 94, 98, 104, 108, 113, 130, 135, 138, 142, 156, 163, 175-76, 180 and 203 (identifying other named Plaintiffs who suffer from inadequate instructional materials).) These students, and many others like them, are receiving compromised course instruction that makes it difficult or impossible for them to satisfy State requirements for grade promotion and graduation.

¹¹ In many cases, where textbook shortages exist and books must be shared by multiple classes throughout a school day, teachers provide books for in-class use only, and cannot send the books home with any student. (*See, e.g.*, Silas Moultrie Dec. ¶ 4; Moises Canel Dec. ¶ 3.)

¹² Defendants Delaine Eastin, Department of Education and State Board of Education’s Responses to Plaintiffs’ First Set of Special Interrogatories, at 5, ll. 12-13, Press Dec., Ex. G.

1 [d]eclines in general school funding over the last 20 years led many districts to defer
2 preventive maintenance in order to maintain education programs. As a result, some school
facilities are in a state of serious physical disrepair.

3 (*Id.* at 4.) It relies in part on a survey by the U.S. General Accounting Office (the "GAO"), noting
4 that "[i]n a nation where the condition of school facilities has been labeled a crisis, California school
5 districts report their schools to be in some of the worst condition in the country." (*Id.*)¹³ While
6 California's school facilities crisis affects thousands of children statewide,

7 [t]he State ... does not have an inventory detailing when schools were built, their attributes, or
8 their condition. Without such an inventory, the State is unable to accurately forecast the
9 demand for new facilities or the costs of maintaining and renovating existing facilities.¹⁴

10 Many of the representative Plaintiffs attend schools where they are exposed to the unsafe,
11 unhealthful, overcrowded facilities and slum conditions described above. Plaintiffs' abilities to
12 obtain an education are severely compromised by some or all of the following conditions: classrooms
13 where temperatures can reach 90 degrees and above or are so frigid that students must wear hats,
14 coats, and gloves in the classroom;¹⁵ classrooms and school grounds that are infested with
15 cockroaches, rats, and mice;¹⁶ buildings with leaky roofs, broken windows, peeling paint, and
16 defective electrical systems;¹⁷ classrooms where high noise levels make it difficult or impossible to

17
18
19 _____
20 ¹³ A GAO survey entitled *School Facilities: America's Schools Report Differing Conditions*
21 (June 14, 1996) (hereinafter, "*School Facilities*") at 32, estimated that 42.9% of California schools
had at least one "inadequate" building. (Press Dec, Ex. J.) Only two states and the District of
Columbia ranked worse. (*Id.* at 32-4.)

22 ¹⁴ Little Hoover Commission, *To Build a Better School* (Feb. 2000) at vi, Press Dec., Ex. K.

23 ¹⁵ See, e.g., Silas Moultrie Dec. ¶ 9 (student forced to wear two sweaters, gloves, earmuffs
and a scarf in class); and Carlos Ramirez Dec. ¶ 3 (class so hot that teacher sprayed students with
water). Many other named and unnamed Plaintiffs suffer under similar conditions. (See, e.g., FAC
24 ¶¶ 83, 110, 116, 126, 139, 140, 154 and 162.)

25 ¹⁶ See, e.g., Silas Moultrie Dec. ¶ 8 (rodents run around classrooms; dead mice and rats in
classes); Alondra Jones Dec. ¶ 3 (rodent droppings in class); and Lizette Ruiz Dec. ¶ 8 (student
regularly sees rodent droppings in classes). Many other named Plaintiffs are exposed to similarly
26 abhorrent conditions. (See e.g. FAC ¶¶ 112, 191, 207, 211 and 246.)

27 ¹⁷ See, e.g., Kristal Ruiz Dec. ¶ 4 (broken windows covered with wood or metal instead of
being replaced with glass); Glauz Diego Dec. ¶ 10 (ceiling tiles have rain damage and fall from
28 ceiling); see also FAC ¶¶ 82, 128, 155, 159, 205, 217 (describing similar problems in other schools).

1 concentrate and learn;¹⁸ and bathrooms that are inaccessible or in despicable condition, with broken
2 toilets, or that are not stocked with toilet paper, soap and paper towels.¹⁹

3 In the representative Plaintiffs' schools, some students are forced to stand during class or sit
4 on the floor (*see, e.g.*, Alondra Jones Dec. ¶ 11 and D'Andre Lampkin Dec. ¶ 4) while others must
5 forego required classes altogether because their schools do not have sufficient space to accommodate
6 them (*see, e.g.*, Glauz Diego Dec. ¶¶ 3-5). Severe overcrowding is also present in other schools
7 identified in the Complaint. (*See, e.g.*, FAC ¶¶ 127, 128, 145, 208, 219 and 227.)

8 4. Multi-Tracking and Busing

9 Hundreds of thousands of students attend overcrowded schools that have resorted to multi-
10 track, year-round calendars in a desperate attempt to accommodate the overwhelming number of
11 students they must house, and thousands more are bused because their local schools have no space for
12 them.²⁰ Multi-track calendars allow schools to increase their capacity to house students without the
13 construction of additional facilities. Busing, by contrast, allows schools to decrease their enrollment
14 by shifting the burdens of overcrowding to other schools. As enrollment continues to swell and
15 outpace the supply of new facilities, temporary, stop-gap measures have become chronic features of
16 education in many California schools. "Existing school buildings do not adequately house today's
17 public school students and projected enrollment growth over the next ten years will make a bad
18 situation even worse." (*Predicament* at 1, Press Dec., Ex. I.)

19 As the State concedes, and as educators and leaders agree, "[t]he only real solution to
20 overcrowded schools is to build new ones." (Defendants' Special Demurrer at 15; *see also*

21
22 ¹⁸ *See, e.g.*, Richard Ramirez Dec. ¶ 4 (classes held in areas separated by removable dividers
23 where noise from other classes permeates area); Manuel Ortiz Dec. ¶ 6 (classes held in library where
student noise disrupted class).

24 ¹⁹ *See, e.g.*, D'Andre Lampkin Dec. ¶ 7 (Crenshaw High only has two bathrooms that are
25 regularly open); Moises Canel Dec. ¶ 4 (toilets clogged and overflowing on regular basis); Glauz
26 Diego Dec. ¶ 11 (restrooms lack toilet paper, soap and paper towels; some toilets do not flush); *see*
27 *also* FAC ¶¶ 81, 92, 117, 148, 164, 172, 181, 183, 236 (similar conditions reoccur in other schools).

28 ²⁰ Faced with what the California Research Bureau has described as a "constant shortage of
funds," overcrowded districts throughout the state have out of necessity resorted to multi-track, year-
round calendars and busing. (Joel Cohen, California Research Bureau, *School Facility Financing: A
History of the State Allocation Board and Options for the Distribution of Proposition 1A Funds* (Feb.
1999) (hereinafter, "*School Facility Financing*") at 2, Press Dec., Ex. L.)

1 *Predicament* at 2.) Despite this obvious problem and recognized solution, investment in school
2 facilities “has been flatly inadequate to the tremendous statewide need.” (*Predicament* at 1.)²¹

3 Of the State’s approximately 6 million public school students, just over 1 million students
4 attended schools operating on multi-track, year-round calendars during the 1999-2000 school year.
5 (See California Department of Education (“CDE”), Facilities Planning Division, *Year-Round*
6 *Education Statistics 1999-2000*, at 1, Press Dec., Ex. M.) More than one thousand schools operated
7 on multi-track calendars, of which 225 schools operated on three-track calendars that increase
8 capacity by as much as fifty percent but provide students significantly fewer days of instruction than
9 a traditional school year. (*Id.*)²² Those schools enrolled a total of nearly 330,000 students, all of
10 whom experience the deprivations complained of by the Plaintiffs in this case.

11 While the great majority of the State’s students attend neighborhood schools, thousands must
12 be bused to school because their neighborhood schools lack space for them. In LAUSD, according to
13 its Facilities Task Force, “[a]s a result of the problems created by overcrowded campuses, nearly
14 25,000 students are transported every day out of their neighborhoods to less crowded schools. This
15 number is expected to increase dramatically in the coming years.”²³ Some of these children have up
16 to a 100-mile commute that often requires them to spend hours in rush hour traffic. (*Id.* at 1.)

17 As explained in the Declaration of Hector O. Villagra, the Mexican American Legal Defense
18 and Educational Fund (“MALDEF”) has special expertise on issues of multitracking and excessive
19
20

21 ²¹ Facilities funding has three main sources: State bonds, local general obligation bonds, and
22 developer fees. State bonds have provided approximately half of all school facilities funding since
23 1986. (*Predicament*, at 9-10.) The most recent bond, Proposition 1A, enacted in November 1998,
24 continues the pattern of underfunding school facilities. While the bond provided \$6.7 billion for
25 school construction and repair, those funds are plainly insufficient to meet the state’s infrastructure
26 needs. “Based on the Department of Finance projections,” the California Research Bureau, which
27 provides nonpartisan research to the Governor, members of the Legislature, and other state
28 constitutional officers, concluded, “the six years following this bond issue will require roughly an
additional \$10 billion in State money.” (*School Facility Financing*, at 19, Press Dec., Ex. L; see also
Cal. Dep’t of Finance, *Capital Outlay & Infrastructure Report* (1999), at 15, Press Dec., Ex. O.)

²² See also CDE, Facilities Planning Division, *Year-Round Education Program Guide*, Press
Dec., Ex. N.

²³ LAUSD School Reform Office, Facilities Task Force website, at 1, Press Dec., Ex. P.

1 busing, and focuses on these issues exclusively. This is reflected in the proposed certification of a
2 multi-tracking/busing subclass, as to which MALDEF will serve as lead counsel.

3 The conditions under which the named Plaintiffs suffer are representative of those suffered by
4 class members: Plaintiff Glauz Diego attends Fremont High, which operates on a multi-track, year-
5 round schedule that provides students with less school days per year than schools on a traditional
6 schedule. (Glauz Diego Dec. ¶ 9.) Plaintiff Samuel Tellechea attends Cahuenga Elementary, which
7 also operates on a multi-track, year round basis. (Rosa Tellechea Dec. ¶ 1.)²⁴ Plaintiff Jonathan
8 Tellechea must be bused to school because his neighborhood school, Cahuenga Elementary -- despite
9 operating on a multi-track schedule -- lacks space for him and over a thousand other children in the
10 neighborhood. (Rosa Tellechea Dec. ¶ 1.)²⁵

11 **III. THE PROPOSED CLASS SHOULD BE CERTIFIED**

12 CCP section 382 authorizes a class action where “the question is one of a common or general
13 interest, of many persons, or when the parties are numerous, and it is impractical to bring them all
14 before the court.” In considering the propriety of class certification, California courts regularly look
15 to FRCP 23, the analogous federal provision governing class actions, and the case law interpreting it.
16 *Linder*, 23 Cal. 4th at 437. That is particularly true where, as here, the action is one for declaratory
17 and injunctive relief, not damages. While the text of CCP section 382 does not make an explicit
18 distinction between class actions seeking declaratory and injunctive relief as opposed to class actions
19 seeking damages, California courts have adopted the distinction that is drawn in the federal rules.²⁶

22 ²⁴ Many other named Plaintiffs suffer from multi-tracking. (See FAC ¶¶ 169, 190, 201, 206,
23 222, 234, 239, 243, 266 and 269.)

23 ²⁵ The schools districts’ decisions to bus students in an attempt to cope with overcrowding
24 affects many other named and unnamed Plaintiffs. (See, e.g., *District Weighs Evictions to Make Way*
25 *for Schools*, Los Angeles Times, Jan. 9, 2000, Press Dec., Ex. Q.)

25 ²⁶ For example, California courts have held that notice to class members is not required in
26 suits primarily seeking injunctive relief, adopting the distinction between FRCP 23(b)(2), the federal
27 provision governing injunctive classes, and damages suits under FRCP 23(b)(3), where notice is
28 required. See *Lowry v. Obledo*, 111 Cal. App. 3d 14, 22 (1980). Similarly, courts have looked to
FRCP 23(b)(2) to decide that under CCP § 382, class members need not be provided with the right to
“opt out” where damages are not the primary focus, as they are in (b)(3) actions. *Bell v. American*
Title Ins., 226 Cal. App. 3d 1589, 1602-09 (1991).

1 Rule 9 of the Local Rules for the San Francisco Superior Court (the "Class Action Manual")
2 sets forth seven issues to be addressed in a motion for class certification.²⁷ Each of these issues,
3 discussed below, weighs heavily in favor of certification.

4 **A. A Class Action Is Superior to Other Methods of Adjudication**

5 Certification of the Plaintiff class is appropriate because proceeding by class action will yield
6 "[s]ubstantial benefits both to the litigants and to the court." *Vasquez v. Superior Court*, 4 Cal. 3d
7 800, 810 (1971). Plaintiffs in this action are seeking broad injunctive relief on behalf of a large
8 number of students attending California's public schools who all suffer from the same constitutional
9 and statutory deprivations. As a result, this action is ideally suited for class certification as a Rule
10 23(b)(2) type of class action. *See* 1 Newberg on Class Actions § 4.11, at 4-39 (3d ed. 1992) ("Rule
11 23(b)(2) class actions were designed specifically for civil rights cases seeking broad declaratory or
12 injunctive relief for a numerous and often unascertainable or amorphous class of persons"). There
13 are numerous benefits from certifying a class in this case, including those discussed briefly below.

14 **1. Avoiding a Multiplicity of Actions**

15 As the Court has noted, "[i]f, in fact, the State does not have the legally required oversight
16 and management systems in place, the same kind of problems would be prone to recur elsewhere."
17 (Order, Nov. 14, 2000, at 2.) Named plaintiffs are certainly not the only students who suffer the
18 fundamental deprivations that the State has a duty to correct, and their schools are not the only
19 schools at which students suffer from the constitutional and statutory violations asserted in this case.
20 Accordingly, the risk of a multiplicity of actions "dealing with identical basic issues" is high, and is
21 likely to burden both the courts and the parties. *Daar v. Yellow Cab*, 67 Cal. 2d 695, 714-15 (1967).
22 Class certification would allow all of these claims to be resolved in one action, "eliminating repetitive
23 litigation." *Reyes v. San Diego Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1270 (1987).

24
25 ²⁷ The issues identified for briefing by the Class Action Manual are: (1) constitution of the
26 class; (2) common, similar and unique questions of law and fact; (3) superiority of the class action to
27 other available methods of adjudication; (4) membership of the class representatives in the class; (5)
28 ability of the class representatives to fairly and adequately protect the interests of the class; (6)
necessity for and content of class notice; and (7) any "additional issues." (Class Action Manual
§ 4.01.)

1 2. **Enhancing Case Manageability**

2 Certifying a class will provide a structure for the pre-trial and trial proceedings and will
3 narrow and delimit the scope of the issues and proof for trial. Far from keeping the case more
4 manageable and less complicated, the failure to certify a class would actually increase the burdens on
5 the Court, the named Plaintiffs and indeed, the Defendants, while inviting greater complexity, more
6 opportunities for procedural and discovery disputes and less certainty that those who will be affected
7 by the injunctive relief awarded are properly represented by the named Plaintiffs.

8 Rule 23(b)(2) class actions were specifically designed to address these case management
9 problems. It is the procedural vehicle by which courts define the scope and structure of litigation
10 seeking injunctive relief for a class of persons harmed by a defendant's common policies and
11 practices; and was specifically designed for actions like this one. *See International Molders and*
12 *Allied Workers' Local Union No. 164 v. Nelson*, 102 F.R.D. 457, 461 (N.D. Cal. 1983); 1 *Newberg*
13 *on Class Actions* § 4.11.

14 3. **Minimizing Discovery and Evidentiary Disputes**

15 Plaintiffs may well wish to take discovery, and introduce evidence in this case, showing that
16 the State's failure to acknowledge its constitutional responsibilities affects schools other than those
17 attended by named Plaintiffs. Defendants are likely to try to argue that evidence relating to other
18 schools, or to Defendants' systems or lack thereof pertaining to other schools or districts, is
19 "irrelevant" to the action if a class is not certified.

20 There are likely to be many other disputes relating to the proper scope of discovery and
21 relevance in the absence of either an agreement on the scope of the case or certification of the class.
22 While named Plaintiffs would vigorously resist attempts to deprive them of evidence from other
23 schools that supports their claims, or to limit the scope of the relief sought to only their schools, these
24 kinds of disputes would be avoided by class certification.

25 4. **Ensuring the Effectiveness of a Final Judgment and Protecting the**
26 **Court's Decisions on Appeal**

27 Class certification will also increase the effectiveness of a final judgment. Once the class is
28 certified, any named or unnamed class member would have standing to enforce a final injunction,

1 based either on his or her membership in the class or through the operation of res judicata. *See Reyes*,
2 196 Cal. App. 3d at 1270 n.6; *see also Founding Church of Scientology v. Director, F.B.I.*, 459 F.
3 Supp. 748, 756 (D.D.C. 1978). If, on the other hand, the case proceeded to a final judgment as a set
4 of individuals' claims, Defendants could argue in a subsequent proceeding that any person other than
5 a named Plaintiff who sought to compel Defendants to comply with a final injunction lacked standing
6 to enforce that injunction.²⁸

7 The benefits of res judicata will benefit Defendants as well, by allowing them to respond
8 easily to subsequent actions that raise issues identical to those raised by Plaintiffs: "Whether it wins
9 or loses on the merits, [a defendant] has a distinct and personal interest in seeing the entire plaintiff
10 class bound by res judicata." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 805 (1985).

11 Finally, class certification would increase the likelihood that an order granting broad
12 declaratory and injunctive relief would be upheld on appeal. While Plaintiffs believe, as noted above,
13 that a final injunction could issue -- absent class certification -- addressing statewide deficiencies in
14 Defendants' system of overseeing the public schools, Defendants might argue on appeal from such a
15 judgment that the Court exceeded the bounds of its authority by granting relief that went beyond
16 matters directly before the Court. Defendants have already stated that they believe this action is
17 "non-justiciable" in nature. If the issues raised by Plaintiffs can be resolved without being tied up in
18 the appellate courts, thousands of school children could more swiftly benefit from a ruling in
19 Plaintiffs' favor.

20 5. Avoiding Arguments About Mootness

21 Class certification will also benefit the Court, Plaintiffs and the public by preventing
22 arguments about mootness before the important issues it raises can be adjudicated. This is a well-
23 recognized benefit of the class action device (*see, e.g., Reyes*, 196 Cal. App. 3d at 1270 n.6) and is

24
25 ²⁸ There would be a basis for a similarly situated plaintiff to rely on collateral estoppel in a
26 subsequent action, absent class certification, but assertion of collateral estoppel might be contested on
27 grounds such as whether the issues in the two cases were actually identical (*see, e.g., Lumpkin v.*
28 *Jordan*, 49 Cal. App. 4th 1223, 1230 (1996)). This problem would not arise in a certified class action
because the class definition would allow the Court to determine whether a subsequent plaintiffs had
standing to compel enforcement, and a judgment rendered with absent class members in mind.

1 particularly important where, as here, the proposed class consists of students. *See Guckenberger v.*
2 *Boston Univ.*, 957 F. Supp. 306, 326-27 (D. Mass. 1997) ("The danger of mootness is great enough in
3 the instant litigation to necessitate class certification. Students graduate, transfer, drop out, move
4 away, grow disinterested, fall in love. Certainly, if a concern arises early enough in a claimant's
5 educational odyssey, it may be heard [by the] court. However, all too often student-initiated disputes
6 escape review."). It would work a substantial injustice for this case to be mooted by, for example, the
7 graduation of the named Plaintiffs before final judgment. *See Serrano v. Priest*, 5 Cal. 3d 584, 608-
8 09 (1971) ("the distinctive and priceless function of education in our society warrants, indeed
9 compels, our treating it as a 'fundamental interest' " under the California Constitution).

10 Moreover, because Defendants have made it clear that they intend to seek dismissal of
11 individual named Plaintiffs -- in an apparent attempt to prevent adjudication of the constitutionality
12 of the State's system of oversight and management of its schools -- the burdens placed upon Plaintiffs
13 and their counsel will be magnified absent class certification. Although there would be other answers
14 to a contention that the case had become moot even if the class were not certified, class certification
15 would largely obviate questions of mootness.²⁹

16 **6. Preserving the Attorney-Client Privilege and the Adequacy of Counsel's**
17 **Representation of Others Who Suffer From the State's Constitutional**
Violations

18 Class certification would make "the class the attorney's client for all practical purposes." *Van*
19 *Gemert v. Boeing Co.*, 590 F.2d 433, 440 n.15 (2d Cir. 1978) (citation omitted). This would allow
20 class members to confide in plaintiff's counsel about the deprivations they suffer under the protection
21 of the attorney-client privilege. The only way to replicate this protection created by class
22 certification would be to add each additional student as a new plaintiff. This would be an inefficient
23

24 _____
25 ²⁹ If a class is certified, the changes in status of the named Plaintiffs' claims would not
26 necessarily moot the action, because the issues with respect to students who were unnamed class
27 members would not be moot. *See Sosna v. Iowa*, 419 U.S. 393, 401 (1975) ("Although the
28 controversy is no longer live as to appellant Sosna, it remains very much alive for the class of persons
she has been certified to represent."); *Mendoza v. County of Tulare*, 128 Cal. App. 3d 403, 413
(1982) ("[M]ootness does not bar resolution of a class claim where public interest in a matter is
strong and unnamed class members maintain a live controversy therein.").

1 and time-consuming endeavor, involving amending the Complaint, and increasing the burden on the
2 existing parties, the Court, and counsel.

3 Class certification also protects the class by ensuring that they receive adequate and
4 competent representation by counsel for the class. The class representatives and their attorneys must
5 be able to fairly and adequately represent the interest of the class. *See Linder v. Thrifty Oil*, 23 Cal.
6 4th 429, 435 (2000). It is for this reason that class counsel must be qualified, experienced and
7 generally able to conduct the litigation. Class certification will ensure that the class's interests are
8 protected.

9 B. The Class Is Properly Constituted

10 To determine whether the class is properly constituted, the Court should examine whether the
11 class is sufficiently well-defined, whether its members are so numerous as to make joinder
12 impracticable, and, where appropriate, whether adequate means exist for identifying class members.
13 *Reyes*, 196 Cal. App. 3d at 1271 (citing *Vasquez*, 4 Cal. 3d at 821-22); *Miller v. Woods*, 148 Cal.
14 App. 3d 862, 873 (1983). Here, the class is well defined, its members are far too numerous to be
15 joined in one action, and individual identification of class members is neither necessary nor
16 contemplated in this forum.

17 1. The Class Is Sufficiently Well-Defined

18 Plaintiffs' proposed class definition is set forth in Section II(B) above. The class is limited to
19 students who suffer the identified deprivations, in contrast with those who do not. California courts
20 repeatedly have approved class definitions that focus on those persons who are deprived benefits to
21 which they are entitled due to challenged government practices.³⁰ Plaintiffs' proposed class
22 definition specifically identifies the boundaries of the class by describing in detail the conditions that
23
24

25 ³⁰ *See, e.g., Reyes*, 196 Cal. App. 3d at 1269 (in action challenging government practice of
26 denying welfare benefits, court certified class "of all individuals who will be sanctioned by the
27 County and deprived of general relief benefits") and *Miller*, 148 Cal. App. 3d at 873 (trial court erred
28 in refusing to certify class of "all applicants, recipients and providers of [certain services for disabled]
in California who have been or will be disqualified from receiving or providing" aid due to
challenged regulation).

1 Plaintiffs contend are deprivations of basic educational necessities, and hence, is sufficiently well-
2 defined.

3 In other education reform cases, courts have allowed class actions to proceed based on
4 definitions that are substantially similar, and in some cases, less precise, than the definitions set forth
5 above. See *Alabama Coalition for Equity Inc. v. Hunt*, 624 So. 2d 107, 111, 1993 Ala. LEXIS 441, at
6 *13 (Apr. 27, 1993) (court certified statewide class of “all children who are presently enrolled or will
7 be enrolled in public schools in Alabama that provide less than a minimally adequate education”) and
8 *Ceaser v. Pataki*, 2000 U.S. Dist. LEXIS 11532, at *25 (S.D.N.Y. Aug. 14, 2000) (certifying
9 statewide class, excluding New York City schools, of all students of color attending public schools
10 with “high-minority” enrollment).³¹ In *Serrano v. Priest*, plaintiffs defined the class as “all public
11 school pupils in California, ‘except children in that school district, the identity of which is presently
12 unknown, which school district affords the greatest educational opportunity of all school districts
13 within California’” (*Serrano*, 5 Cal. 3d at 589); the trial court ultimately certified a class of “all
14 children in the State of California who are enrolled in and attending public elementary and secondary
15 schools, except those children attending school in [intervening-defendant school districts].”
16 (Findings of Fact and Conclusions of Law (Aug. 30, 1974), Press Dec., Ex. R.)

17 Outside the education reform context, California courts have approved similar types of class
18 definitions that delineated class boundaries based on the harm being suffered by class members. In
19 *Miller*, 148 Cal. App. 3d at 881, for example, a California appellate court reversed the lower court’s
20 denial of class certification of all persons who suffered due to a state regulation that restricted aid for
21 caregivers of the disabled. The appellate court found that certification was appropriate for a class
22 consisting of “all applicants, recipients and providers of [in-home supportive services] in California
23

24 ³¹ Because this is the first case in California to seek declaratory relief on behalf of all public
25 school children who are being harmed by deficiencies in the State’s system of delivering educational
26 necessities, it is helpful to consider the class definitions approved in similar cases in other states.
27 California courts routinely look to out-of-state and federal precedent to aid in their determinations
28 regarding class certification. See, e.g., *Linder*, 23 Cal. 4th at 437 (California courts look to Rule 23
absent on-point California authority); *San Francisco Unified Sch. Dist. v. W.R. Grace & Co.*, 37 Cal.
App. 4th 1318, 1340 (1995) (court, on its own initiative, surveyed out-of-state decisions on class
certification).

1 who have been or will be disqualified from receiving or providing protective supervision based solely
2 on [the State agency's unlawful regulation],” stating that the class was “precisely defined.” *Id.* at
3 873; *see also Lowry*, 111 Cal. App. 3d at 25-26 (trial court abused discretion by refusing to certify
4 class of all persons denied aid to families with dependent children because of invalid regulation).

5 Plaintiffs have gone beyond the minimum requirements for defining the proposed class: The
6 class definition adequately sets forth the parameters of the class by identifying the conditions that
7 Plaintiffs contend interfere with their fundamental right to obtain an education.³² Additionally,
8 because Plaintiffs bring this action seeking broad injunctive relief on behalf of a large class of
9 persons who suffer constitutional deprivations, their claims are *particularly suited* for class treatment.
10 *See* 1 Newberg on Class Actions (3d ed. 1992) § 4.11, at 4-39; *see also* Advisory Committee Notes to
11 FRCP 23(b)(2) (“Illustrative are various actions in the civil-rights field where a party is charged with
12 discriminating unlawfully against a class, usually one whose members are incapable of specific
13 enumeration.”).

14 Defendants can take no comfort in cases outside the Rule 23(b)(2) context that require a high
15 level of specificity in the class definition. Those cases are concerned with the need to identify
16 individual plaintiffs in order to award monetary damages and with the effect class certification could
17 have on the magnitude of a damages award. In cases dealing with money damages, the class must be
18 defined with sufficient specificity such that class members can be provided notice and exercise their
19 due process rights to opt out. In contrast, “[c]lass actions brought under Rule 23(b)(2) require a
20 relatively low level of precision in the description of the class.” *Grabau v. Hughes*, 1981 U.S. Dist.
21 LEXIS 18179, at *12 (D. Md. Dec. 22, 1981).³³ Plaintiffs’ class definition is plainly adequate.

22
23
24 ³² The proposed class definition also properly includes future class members. *Miller*, 148 Cal.
25 App. 3d at 873 (including in class definition future welfare applicants who would be denied benefits);
26 *Mills v. Board of Educ.*, 348 F. Supp. 866, 870 (D.D.C. 1972) (class included children who might in
the future be excluded from school because of a disability).

27 ³³ *See also Yaffe v. Powers*, 454 F.2d 1362, 1366 (1st Cir. 1972) (“Although notice to and
28 therefore precise definition of the members of the suggested class are important to certification of a
subdivision (b)(3) class, notice to the members of a (b)(2) class is not required and the actual
membership of the class need not therefore be precisely delimited.”).

1 2. The Numerosity Requirement Is Satisfied

2 The children who comprise the Plaintiff class are far too numerous to make joinder
3 practicable. *See Vasquez*, 4 Cal. 3d at 811 (class consisting of approximately 200 members too
4 numerous to bring before the court). While there are no precise figures demonstrating the number of
5 California public school children who suffer from the conditions described in the class definition, the
6 class size exceeds 75,192, which is the approximate number of children that attend the 46 schools
7 identified in the Complaint.

8 Moreover, “[t]he exact size of the class need not be known so long as general knowledge and
9 common sense indicate that it is large.” *Doe v. Los Angeles Unified Sch. Dist.*, 48 F. Supp. 2d 1233,
10 1239 (C.D. Cal. 1999) (quotations omitted). The inclusion in the class definition of children who will
11 in the future be made to suffer from the conditions described above also makes joinder of all
12 Plaintiffs impracticable. *Jordan v. Los Angeles County*, 669 F.2d 1311, 1320 (9th Cir. 1982), *vacated*
13 *on other grounds*, 459 U.S. 810 (“The joinder of unknown individuals is inherently impracticable.”).
14 Accordingly, the class is properly constituted.

15 C. Common Questions of Law and Fact Demonstrate a Well-Defined
16 Community of Interest

17 At its core, the “common questions” requirement is intended to prevent certification of a class
18 action that would require a court to conduct numerous mini-trials regarding the class members’
19 individual rights to relief. *See Daar*, 7 Cal. 2d at 714-15 (class treatment appropriate where it would
20 avoid placing “multiple burdens upon the plaintiffs, the defendant and the court”). The California
21 Supreme Court has recently made clear that the “common questions” element requires only
22 “predominant common questions of law *or* fact.” *Linder*, 23 Cal. 4th at 435 (emphasis added); *see*
23 *also Walters v. Reno*, 145 F.3d 1032, 1045-46 (9th Cir. 1998) (existence of common legal issue with
24 divergent factual predicates sufficient to meet commonality requirement of Rule 23). Here, common
25 questions of law *and* fact predominate, and accordingly, there is a well-defined community of interest
26 between the named Plaintiffs and all other similarly situated students.

1 **1. Common Questions of Law Predominate**

2 As the Court has noted, this case is about the State's system of oversight and its alleged
3 inadequacies. (Order, Nov. 14, 2000, at 2.) Plaintiffs are united by the predominant legal questions
4 of whether Defendants, by failing to implement an effective system of oversight and management,
5 have violated equal protection guarantees, the California Constitution's guarantee of a free and
6 common education for all students in California public schools, the federal Civil Rights Act of 1964
7 and other California statutes.

8 Plaintiffs rely on the same provisions in the California Constitution and Title VI in support of
9 their claims that their constitutional rights are being violated. (*See* FAC ¶¶ 299-317, 320-22.)³⁴
10 Furthermore, all Plaintiffs seek the same injunctive relief (FAC ¶¶ 325-28); they seek the
11 establishment of baseline standards and a statewide system of accountability to ensure the provision
12 of specified basic educational necessities to all California public school children. Plaintiffs'
13 challenges to the State's system for preventing, or identifying and correcting, deficiencies in its
14 public schools will stand or fall together based on the same legal conclusions, *i.e.*, whether the State
15 system is constitutional and legally sufficient.

16 Courts have repeatedly found the "common questions" element satisfied where, as here, the
17 central legal issue is whether a class suffers from a unitary course of conduct perpetuated by the
18 defendants. For example, in *Baby Neal v. Casey*, 43 F.3d 48, 49 (3d Cir. 1994), plaintiffs brought a
19 class action challenging systematic deficiencies in Philadelphia's child welfare system (the "DHS")
20 that prevented the city from delivering to its children the quality of care required by law. The
21 plaintiff-children complained of a wide variety of problems, including "insufficient numbers of
22 trained caseworkers; an insufficient number of medical, psychiatric, psychological, and educational
23 service providers; [and] insufficient numbers of trained foster parents." *Id.* at 53. The district court
24 denied certification based "on its view that each of the plaintiffs had his or her own individual

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26 ³⁴ All Plaintiffs allege: (1) violation of the Equal Protection Clauses of the California
27 Constitution, Article I, Section 7(a) and Article IV, Section 16(a); (2) violation of Article IX,
28 Sections 1 and 5 of the Constitution; (3) violation of the due process clauses of Article I, Sections
29 7(a) & 15 of the Constitution; and (4) Violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C.
30 § 2000d and 34 C.F.R. § 100.3(b)(2).

1 circumstances and needs, and that the class thus could not complain about a single, common injury.”
2 *Id.* at 54. The Third Circuit reversed, finding that the “common questions” element was satisfied
3 because “the putative class members ... share[d] the common legal claim that DHS’s systemic
4 deficiencies result[ed] in widespread violations of their statutory and constitutional rights,
5 irrespective of their varying individual needs and complaints.” *Id.* at 61.

6 Furthermore, as the *Baby Neal* court explained, “(b)(2) classes have been certified in a legion
7 of civil rights cases where commonality findings were based primarily on the fact that the defendants’
8 conduct is central to the claims of all class members irrespective of their individual circumstances and
9 the disparate effects of the conduct.” *Id.* at 57 (citing 7A Charles A. Wright & Arthur R. Miller,
10 Federal Practice and Procedure § 1763, at 219 (1986)).³⁵ This case is analogous to *Baby Neal*
11 because the school children allege they are suffering as a result of a unitary course of conduct of the
12 State and its responsible officials -- namely, the State’s failure to prevent, or detect and correct, the
13 conditions described in the Complaint.

14 2. Common Questions of Fact Also Predominate

15 Common issues of fact also predominate among the representative Plaintiffs and the other
16 class members. The factual underpinning of the primary legal issue discussed above is *whether* the
17 State has an existing system of oversight and management for its public schools. If the State does
18 have mechanisms in place for preventing, detecting and correcting the deprivations of which
19 Plaintiffs complain, the types of mechanisms that are in place at the State level (and how they work)
20 are factual questions that are common to all class members.

21 Common questions of fact also exist as to the deprivations themselves, which reoccur in
22 similar forms throughout the class members’ schools. The proposed class members suffer from
23 inadequate textbooks and instructional materials, unqualified teachers, unsafe and unhealthful school

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25 ³⁵ See also *Jordan*, 669 F.2d at 1320 (commonality requirement satisfied “where the question
26 of law linking the class members is substantially related to the resolution of the litigation even
27 though the individuals are not identically situated”); *Coalition for Economic Equity v. Wilson*, 1996
28 U.S. Dist. LEXIS 18486 at *5-6 (N.D. Cal. Nov. 27, 1996) (“When claims arise out of common
legal and remedial theories, factual variations between class members is not enough to defeat
commonality.”); *Arnold v. United Artists Theatre Circuit*, 158 F.R.D. 439, 449 (N.D. Cal. 1994)
(requirement satisfied where common discriminatory practices alleged).

1 facilities and severe overcrowding. (See FAC ¶¶ 1, 8-13.) The common questions also include
2 whether or not the conditions can be avoided or remedied by a better system of oversight.

3 While not all students suffer from *each* of the deprivations, class members suffer from at least
4 one, and in many cases, several of the conditions. Of course, the law does not require that all class
5 members suffer from each condition complained of -- common questions of law as well as fact can
6 predominate even though class members suffer in different ways and as a result of different
7 deprivations. See, e.g., *Baby Neal*, 43 F.3d at 61; *Mendoza*, 128 Cal. App. 3d at 403. In *Mendoza*,
8 prisoners sought relief for constitutional violations caused by a host of substandard prison conditions,
9 including a lack of access to medical care, telephones, a drug rehabilitation program and a law
10 library, as well as problems with food, sanitation, heating, ventilation and lighting. 128 Cal. App. 3d
11 at 417. While some prisoners suffered from some conditions and not others, the court found that
12 "common questions substantially outweigh those applicable only to separate categories of the class,"
13 and the commonality requirement was satisfied because plaintiffs' claims "could focus primarily on
14 respondents' actions or omissions, and the similarly situated class members would not be required to
15 prove individual facts." *Id.* at 418.

16 Here, as in *Mendoza*, Plaintiffs' claims focus on Defendants' failures at the supervisory level,
17 and seek to address deprivations that constitute a constitutional violation. Because Plaintiffs allege
18 pervasive deprivations that result from the State's lack of an effective system of oversight, the class
19 members' claims share predominant questions of fact. Plaintiffs' *Butt* claim involves establishing, on
20 the merits, that each of the conditions, and a combination of more than one condition, causes a
21 fundamental disparity from prevailing conditions that denies students equal educational opportunity.
22 This means, as a matter of law and fact on the merits, that the State bears the responsibility to prevent
23 or correct each such condition. Thus, the constitution does not allow "zero-sum" tradeoffs among
24 class members.

25 Accordingly, with respect to both common questions of law and of fact (either of which alone
26 would be sufficient), Plaintiffs satisfy the "common questions" requirement.

1 **D. The Class Representatives and Their Counsel Will Fairly and Adequately Protect**
2 **the Interests of the Class**

3 For class treatment to be appropriate, the class representatives and their attorneys must be able
4 to fairly and adequately represent the interests of the class. *See Linder*, 23 Cal. 4th at 435 (citing
5 *Richmond*, 29 Cal. 3d at 470). The class representatives, who are school children who suffer from the
6 State's failure to deliver basic educational necessities, can adequately represent the interests of the
7 class. Both class representatives and members share the common goals of requiring the State to meet
8 its constitutional obligations to remedy the same alleged deprivations. There is no suggestion of
9 antagonism among Plaintiffs (*see Richmond*, 29 Cal. 3d at 470-471), nor is there an indication of
10 collusion between the representative Plaintiffs and Defendants (*see In re Northern Dist. of Cal.,*
11 *Dalkon Shield*, 693 F.2d 847, 855 (9th Cir. 1982), *cert. denied*, 459 U.S. 1171 (1983)). Therefore,
12 the class representatives and members share common interests, and no conflicts of interest exist.

13 Adequacy of representation also depends upon whether the Plaintiffs' attorneys are "qualified,
14 experienced and generally able to conduct the proposed litigation." *Miller*, 148 Cal. App. 3d at 874.
15 Plaintiffs' counsel are highly qualified attorneys from public interest legal organizations, private law
16 firms and universities, who have acted as lead counsel or co-counsel in numerous constitutional, civil
17 rights and class action cases. (See the concurrently filed Declarations of Mark D. Rosenbaum, Jack
18 W. Londen, John Affeldt, Robert Rubin and Hector O. Villagra.) Plaintiffs' counsel are well
19 qualified to conduct this litigation. The representative Plaintiffs and their counsel can adequately
20 represent the interests of the proposed class.

21 **E. Notice To, or Identification of, Class Members Is Unnecessary**

22 The Class Action Manual § 4.27.6 states that "notice to the class is not necessary in all
23 actions." Prejudgment notice should not be required in a Rule 23(b)(2)-type class action that seeks
24 only injunctive relief. In *Miller v. Woods*, 148 Cal. App. 3d at 875, the court explained that notice:

25 is not a requirement in welfare class actions where declaratory or injunctive relief are the
26 primary objective [citations]. California decisions follow the analysis of the federal courts;
27 prejudgment notice "serves no apparent purposes" in welfare class actions where there are no
28 factual disputes and the class is adequately represented by counsel [citations].

1 See also *Gonzales v. Jones*, 116 Cal. App. 3d 978, 985-86 (1981) (notice not required in action in
2 which injunctive relief is primary objective); *Lowry*, 111 Cal. App. 3d at 23 (same).

3 Here, no real purpose is served by providing notice to the thousands of students suffering
4 from the deprivations alleged. Class members in this case will not be required to present proof of
5 their claims or unique facts demonstrating their right to relief. *Baby Neal*, 43 F.3d at 57 (where
6 plaintiffs complain of “a common course of conduct against them,” there is “no need for
7 individualized determinations of the propriety of injunctive relief”). Moreover, identification of class
8 members is neither necessary nor contemplated. See *McCuin v. Secretary of Health & Human Svcs.*,
9 817 F.2d 161, 167 (1st Cir. 1987) (“where only declaratory and injunctive relief is sought for a class,
10 plaintiffs are not required to identify the class members once the existence of the class has been
11 demonstrated.”).³⁶ The effort and expense of requiring notice of this action far outweighs any benefit
12 class members could derive from such notice. Accordingly, notice should not be required.³⁷

13 IV. PLAINTIFFS SHOULD BE RELIEVED FROM THE REQUIREMENTS OF 14 SECTIONS 411-16 AND 421-29 THE CLASS ACTION MANUAL

15 Section 4.03 of the Class Action Manual provides that class actions that are not of the nature
16 contemplated by FRCP 23(b)(3) may be relieved from the special conference, briefing and hearing
17 requirements set forth in sections 4.11-16 and 4.21-29 of the Manual. Because Plaintiffs do not seek
18 monetary damages, but rather broad declaratory and injunctive relief to remedy structural defects in
19 the State’s system for overseeing public education, this case is not a 23(b)(3)-type action and would
20 not benefit from the special requirements of the Manual. As discussed above, this is a (b)(2)-type

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22 ³⁶ While Plaintiffs are not required to identify each class member, if they prevail on the merits
23 of their claims, *the State and its responsible officials* may be required to set up a system of
24 supervision, monitoring and remediation that *identifies class members* (or the schools that they
25 attend) and ensures that their basic educational needs are being met. Such an order would not,
26 however, require the court “to make individual, case-by-case determinations” regarding membership
27 in the class; “[r]ather, the court can fashion precise orders to address specific, system-wide
28 deficiencies and then monitor compliance relative to those orders.” *Baby Neal*, 43 F.3d at 64.

³⁷ In the event the Court does conclude that notice should be provided, notice by publication
or mass media communication would be the most efficient and practicable means of providing notice
to class members. *Cooper v. American Sav. & Loan Ass’n*, 55 Cal. App. 3d 274 (1976) (notice by
publication adequate where class membership very large, monetary damages not primary focus and
issues related to intervention and opt out not significant).

1 case that involves questions of law and fact common to the class as a whole, and will not require the
2 individual identification of class members or individualized determination of class members' rights to
3 relief. Accordingly, although the constitutional and statutory issues raised by Plaintiffs are of
4 statewide significance, the class action aspects of this case are not complex. In these circumstances,
5 Plaintiffs should be exempted from compliance with the special requirements of sections 4.11-16 and
6 4.21-29 of the Class Action Manual.

7 **V. CONCLUSION**

8 For all the foregoing reasons, Plaintiffs respectfully request that the Court certify the proposed
9 class and subclass as defined in Section II(b) above.

10 Dated: March 22, 2001

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