

1 JOHN F. DAUM (SB #52313)
2 FRAMROZE M. VIRJEE (SB #120401);
3 DAVID L. HERRON (SB #158881)
4 O'MELVENY & MYERS LLP
5 Embarcadero Center West
6 275 Battery Street
7 San Francisco, California 94111-3305
8 Telephone: 415.984.8700

9 Attorneys for Defendant State of California

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 CITY AND COUNTY OF SAN FRANCISCO

13 ELIEZER WILLIAMS, et al.,) Case No. 312 236
14)
15 Plaintiffs,) Hearing Date: August 25, 2003
16)
17 vs.) Time: 3:30 p.m.
18)
19 STATE OF CALIFORNIA, DELAINE) Department: 16
20 EASTIN, State Superintendent)
21 Of Public Instruction, STATE) Judge: Hon. Peter J. Busch
22 DEPARTMENT OF EDUCATION, STATE)
23 BOARD OF EDUCATION,)
24)
25 Defendants.)
26)
27)
28)
AND RELATED CROSS-ACTION.)
_____)
_____)

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

LA2:683270.2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, Louise Bay Waters, declare as follows:

1. I am the Associate Superintendent for the Division of Student Achievement in Oakland Unified School District. Currently, I oversee the adoption and purchasing of textbooks for schools in the district as well as the Immediate Intervention/ Underperforming Schools Program (II/USP). I have held my current title for over one year. Prior to that, I was the Assistant Superintendent of Accountability in Oakland Unified for about two years. Before that, I was a principal for seven and one-half years at a school in another district. Before that, I was a Professor of Education for eight years at California State University Hayward. I was also a classroom teacher for three years. I have an administrative credential; secondary teaching credentials in English, History, and Ethnic Studies; and a Reading Specialist credential.

2. I am familiar with the students, teachers, and facilities at Brookfield Elementary School, Marcus Foster Elementary School, and Franklin Elementary School in the Oakland Unified School District, and I am familiar with the curriculum and the educational opportunities that are provided to students at these three schools. I have personal knowledge of the facts set forth in this declaration; and if called as a witness I would and could testify competently thereto.

3. I am familiar with the involvement of Brookfield, Foster, and Franklin in the II/USP Program. In fact, I am in

LA2:623870.2

1 charge of coordinating the II/USP program at the district level
2 for each of the three schools. I have reviewed the Marcus Foster
3 II/USP Action Plan for 2001-2003, dated April 11, 2001, the
4 Brookfield Elementary School Two Year Action Plan for 2000-20002,
5 dated April 6, 2000, and the Franklin Elementary School Two Year
6 Action Plan for 2000-2002, which is dated April 6, 2000. Marcus
7 Foster became an II/USP school beginning in the 2000-2001 school
8 year. Brookfield and Franklin became II/USP schools beginning in
9 the 1999-2000 school year.

10

11 4. I am generally aware of the Williams case and that
12 the plaintiffs in this case have cited, in a submission to this
13 court, pages 18 and 19 of Marcus Foster's II/USP Plan, which they
14 identified at DOE 31092 and DOE 31093; page 11 of Brookfield's
15 II/USP Plan, which they identified as DOE 46164; and page 12 of
16 Franklin's II/USP Plan, which they identified as DOE 46346. I am
17 also aware that they have cited a page from Oakland Unified
18 School District's 1999-2000 Coordinated Compliance Review (CCR)
19 Notification of Findings, which they identified as DOE 23201.

20

21 5. Page DOE 23201, in the CCR document, indicates
22 that at a "Parent Community Input Meeting" on February 28, 2000,
23 a parent or parents commented "8th graders do not have history
24 books." The referenced comment is not accurate, to my knowledge.
25 At that time, eighth grade students in the district had history
26 textbooks, enough for each student to have his or her own to use
27 in class and take home for homework. In addition, eighth graders

28

1 in the district currently have sufficient social studies
2 materials.

3
4 6. Page DOE 31092, in the Marcus Foster Action Plan,
5 contains the statement: "There are no textbooks in Social
6 Science." This statement was not accurate in 2001, when the plan
7 was drafted. Marcus Foster Elementary had textbooks for social
8 science, enough so that every student can have his or her own to
9 use in class and to take home for homework. In addition, Marcus
10 Foster currently has sufficient social studies textbooks, enough
11 for one per student.

12
13 7. Page DOE 31093 in the Marcus Foster Action plan
14 contains the statement "[T]here is a need for Foss kits at each
15 grade level." The Foss kits to which this statement refers are
16 kits for science instruction that are based around a particular
17 unit, such as weather, and which contain materials for science
18 experiments and projects. A teacher typically will use several
19 Foss kits throughout the school year to teach different science
20 units, but will not use any one kit for the entire year. The
21 statement about Foss kits on DOE 31093 is somewhat misleading
22 because it implies that if Foss kits are not stored at the school
23 site, then they are not available to teachers at Marcus Foster.
24 This is not accurate. Oakland Unified stores Foss kits at a
25 centralized district distribution center called the "S.M.A.R.T.
26 Center." Teachers can call into the S.M.A.R.T. Center and
27 request kits and the consumable materials that go with them.
28 Typically, teachers receive the kits within a few days of their

1 requests. There are sufficient Foss kits in the S.M.A.R.T.
2 Center so that every teacher who requests them can have access to
3 them.

4
5 8. We have found that centralizing the storage of the
6 Foss kits makes more sense for Oakland Unified than it would to
7 have a set of Foss kits at every grade level at every school.
8 This is true because the schools in Oakland Unified are of
9 differing sizes. We have found that by centralizing the kits, we
10 can use them more efficiently.

11
12 9. Page DOE 31093 also contains the statements "In
13 *Open Court*, teachers are required to photocopy much of the
14 materials," and "Marcus Foster would benefit from using
15 consumable books in their *Open Court* reading program." Since
16 *Open Court* was fully implemented in Fall 2000, Marcus Foster
17 always had sufficient numbers of the primary *Open Court* textbook
18 so that teachers did not need to make photocopies from it.
19 Currently, Marcus Foster has sufficient consumable workbooks for
20 the *Open Court* program so that every student has his or her own
21 to use in class and take home for homework. I believe that this
22 was also true at the time that the II/USP Action Plan was
23 drafted, although it could be that teachers relied more on
24 photocopies when the school and the district were transitioning
25 to the *Open Court* program.

26
27 10. I think that it is important to note, however,
28 there are portions of the program that are intentionally designed

1 for teachers to make use of photocopies. Indeed, many publishers
2 include "black line masters" or books of black line masters from
3 which teachers can make photocopies to use with their students.
4 In the case of *Open Court*, there are materials for students that
5 need reteaching or challenge in a particular topic – not for the
6 class as a whole. In my opinion, student learning does not
7 necessarily suffer simply because teachers use photocopies to
8 deliver instruction.

9
10 11. Page DOE 31093 also contains the statement "Marcus
11 Foster will need to obtain additional *Hampton Brown* teacher
12 resource kits and *Mathland* kindergarten and 3rd grade levels
13 teacher's manuals." Neither of these series is currently the
14 primary series in use at Marcus Foster. The *Hampton Brown* series
15 now serves as a supplement to *Open Court*, which was fully
16 implemented by Fall 2000. The *Mathland* series was replaced by an
17 new *Harcourt* series, which was piloted during the 2001-2002
18 school year and fully implemented in Fall 2002. Currently,
19 Marcus Foster has sufficient quantities of teacher materials for
20 both the *Open Court* and the new *Harcourt* mathematics series. As
21 a result, obtaining additional teacher materials for these series
22 is a lower priority.

23
24 12. Page DOE 46164 of the Brookfield II/USP Action
25 Plan contains the statement, "The 1998-99 Program Quality Review
26 (PQR) report revealed that the entire faculty did not have
27 training in phonics instruction, that there are inadequate
28 quantities of books and tools, and inconsistent application of

1 recommended instructional practices from classroom to classroom."
2 This is not currently true with regard to phonics instruction at
3 Brookfield. Brookfield uses the *Open Court* program for language
4 arts instruction, which focuses heavily on phonics. Since *Open*
5 *Court* was fully implemented, teachers have received adequate
6 training in phonics instruction, there have been adequate
7 quantities of *Open Court* books and tools for phonics instruction,
8 and there has been a consistent application of the *Open Court*
9 program across classrooms. Indeed, teachers in Oakland Unified
10 have undergone substantial training since *Open Court* was
11 implemented in the district, with most teachers having at between
12 10 and 15 days of *Open Court* training. Furthermore, Brookfield
13 is part of the Reading First program, which is a follow-up
14 reading initiative for low-performing schools that provides money
15 and services for intensive training to support the *Open Court*
16 program. For Brookfield to continue to be eligible for this
17 program, its teachers must undergo significant *Open Court*
18 training.

19
20 13. To the extent that the part of the statement on
21 page DOE 46164 that reads "there are inadequate quantities of
22 books and tools," could be read to refer to instructional
23 materials in areas besides phonics, it is not currently accurate
24 about Brookfield in any core subject. Brookfield currently has
25 adequate quantities of textbooks in mathematics, language arts,
26 science, and social science, and adequate quantities of tools to
27 implement those programs.

28

1 14. Page DOE 46346 of the II/USP Action Plan for
2 Franklin Elementary contains the statement, "Needed in every
3 classroom are books and instructional materials helpful to [ELL]
4 students." At the time that this plan was drafted, Franklin was
5 transitioning from a multi-track, year-round calendar to a
6 single-track calendar. My understanding is that the above
7 statement was included in the II/USP plan because the school
8 anticipated a future need to stock additional classrooms in the
9 coming year. To my knowledge, ELL students at Franklin did not
10 lack books and instructional material at the time that the II/USP
11 plan was written. Rather, the statement on page DOE 46346
12 reflects the anticipation that additional books would be needed
13 in the future. Currently, this statement is not accurate. At
14 Franklin, currently there is a sufficient quantity and an
15 adequate variety of books and instructional materials that are
16 aimed at helping English Language Learners (ELL).

17
18 15. Page DOE 46346 of the Franklin Action Plan also
19 contains the statements, "Sets of 'leveled' books for guided
20 reading are needed," and "Some teachers did not have complete
21 Macmillan textbooks or teacher guides." These statements were
22 made before Franklin implemented the *Open Court* series. Now that
23 this series has been fully implemented, it has replaced leveled
24 books as well as the *Macmillian* series. Indeed, it is
25 philosophically contrary to the *Open Court* program to use leveled
26 readers in reading groups. Currently, Franklin has sufficient
27 numbers of the primary *Open Court* textbook for every student to
28 have his or her own to use in class and take home for homework.

1 In addition, there are sufficient quantities of supplemental
2 reading materials that are part of the *Open Court* program and
3 sufficient quantities of other *Open Court* materials.
4

5 16. Page DGE 46346 of the Franklin II/USP Action Plan
6 also contains the statements, "Some classrooms lacked sets of
7 age-appropriate dictionaries. Every classroom needs a good
8 library as well as bookshelves. The school library needs to
9 update its book collection and remove obsolete volumes; there is
10 a need for emergent, reference, and other non-fiction materials
11 for student research." Franklin currently has adequate library
12 materials. Indeed, the school received a library grant in 2002,
13 with which it purchased updated books. At that time, volunteers
14 and teachers weeded through the collection and removed obsolete
15 volumes and selected which new books to purchase. Furthermore,
16 there are currently adequate reference materials and classroom
17 libraries at Franklin.
18

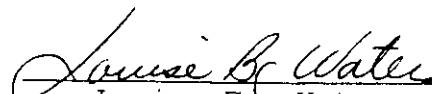
19 17. Page DOE 46346 also states, with regard to
20 Franklin Elementary, that "The technology resources of the school
21 are under-utilized. Teachers want to use computer software to
22 assist their students develop [sic] better reading and writing
23 skills." Since Franklin's II/USP Action Plan was drafted in
24 2000, Franklin has purchased a minimum of four new computers per
25 class and has undertaken significant teacher professional
26 development in the area of technology. The computers at Franklin
27 are equipped with up-to-date software.
28

1 18. In addition, page DOE 46346 states that, at
2 Franklin, "There will be an effort to purchase adequate
3 instructional materials for reading, writing, oral language, and
4 mathematics instruction." Currently, there are adequate
5 materials in all of these subjects at Franklin, with enough
6 primary textbooks in each of these areas for each student to have
7 his or her own to use in class and take home for homework.
8

9 19. Marcus Foster, Brookfield, and Franklin have all
10 enjoyed improvement in student achievement since they became
11 II/USP schools. For example, Franklin's Academic Performance
12 Index score increased from 550 in 2000, the year that it became
13 an II/USP school, to 633 in 2002. There has also been an
14 improvement in recent years in the redesignation rate for ELL
15 students at all three schools.
16

17 I declare under penalty of perjury under the laws of the State of
18 California that the foregoing is true and correct.
19

20 Executed this 15 day of August 2003, at Oakland,
21 California.
22

23 
24 Louise Bay Waters
25
26
27
28