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SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

ELIEZER WILLIAMS, et al., Plaintiffs, vs. STATE OF CALIFORNIA, DELAINE EASTIN, State Superintendent Of Public Instruction, STATE DEPARTMENT OF EDUCATION, STATE BOARD OF EDUCATION, Defendants. AND RELATED CROSS-ACTION.	Case No. 312 236 Hearing Date: September 13, 2001 Time: 8:30 a.m. Department: 16 Judge: Hon. Peter J. Busch

DECLARATION OF THOMAS PAYNE IN SUPPORT OF DEFENDANT STATE OF CALIFORNIA'S OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Thomas Payne, declare as follows:

1. I am currently employed by the Department of Education of the State of California. I make this declaration in support of the opposition of defendant State of California to Plaintiffs' motion for class certification. All the facts set forth in this declaration are known to me personally and, if called as a witness, I could testify competently thereto.

2. Since July 1990, I have been a member of the Year-Round Education Staff of the School Facilities Planning Division with the California Department of Education. Year-Round Education is a reorganization of the school calendar into instructional blocks and vacations distributed across the calendar year so that learning is continuous throughout the year.

3. The traditional calendar is divided into nine months of instruction and three months of vacation during the summer. Year-round calendars break these long instructional/ vacation blocks into shorter units. The most typical instructional/vacation year-round pattern in California public schools is called the 60/20 calendar (sixty days of instruction followed by twenty days of vacation), with the second most utilized being Concept 6 (roughly eighty days of instruction followed by approximately forty days of vacation), and the third most common being the 45/15 calendar. Other less common patterns include the 90/30 calendar, the 60/15 calendar, and the Modified Concept 6 (roughly 40 days of instruction followed by 20 days of

vacation). There are numerous other possible patterns but they are less common.

4. Year-round education also is known by the number of "tracks" it uses. A school using a "single track" year-round calendar is simply changing the instructional/vacation sequence of the school year; all the students and staff are in school or vacation at the same time. But a school using a "multitrack" year-round calendar does something different; it divides the entire student body and staff into different tracks (from three to five). If, for example, a school is using a four-track system, then at any one time three of the four tracks are attending school while the fourth is on vacation. The rotation sequence depends upon the year-round calendar being used. Using the 60/20 calendar, one track returns from vacation and one track leaves every twenty days.

5. One of the primary advantages of a multitrack system is that it expands the seating capacity of a school facility. For example, a school with a seating capacity of 1,000 theoretically could enroll 1,500 students if it uses a three-track system (each track having 500 students and one track always on vacation). The school's seating capacity has been increased by 50 percent. In practice, however, three-track plans typically expand the seating capacity by about 33 percent. If a school with a seating capacity of 1,000 uses a four-track system, it theoretically could enroll 1,333 students, increasing its

capacity by 33 percent. In practice, four-track plans typically expand the seating capacity by about 25 percent.

6. The number of districts using multitrack year-round education has grown significantly because of the facility benefits of multitracking in achieving class size reduction and because of the rapid growth in student population. From 1987 through 1999, total enrollment in California's public schools grew from 4.4 million to over 5.8 million. In addition, class-size reduction was implemented in 1996-97, which effectively resulted in the need for an extra classroom for every two existing K-3 classrooms in the state. From 1985 to 1999, multitrack, year-round education enrollment grew from 163,402 to over 1,012,000. In 1988 there were 69 districts using year-round programs. By June 1997, there were over 100. Today, there are 200 school districts (out of a total of 1,055) that utilize year-round calendars. This number represents a large percentage of the 591 school districts with enrollments greater than 1,000.

7. I am familiar with the Williams v. State of California case, and I have read the Plaintiffs' proposed class definition. I understand that the proposed class includes, among others, all students that are subject to "a year-round, multitrack schedule that provides for fewer days of annual instruction than schools on a traditional calendar provide." Based on the "year-round multitrack" factor alone, Plaintiffs' proposed class would be extremely large and would include

students that attend schools with widely varying calendars and circumstances.

8. If Plaintiffs' proposed class includes all students at year-round, multitrack schools, then approximately 1,016,567 students - approximately 17% of the total student population (currently 6,050,895) - would fall within the proposed class based upon that factor alone. If Plaintiffs' proposed class includes all year-round schools (not just those that multitrack), then 1,331,859 students - approximately 22% of the total student population - would be included in the class. Of California's 8,761 public schools, 1,492 schools (approximately 17%) use year-round educational programs. This number includes 1,241 elementary schools, 135 middle/junior high schools, 40 high schools, 27 alternative high schools, 37 continuation schools and 13 special schools.

9. Plaintiffs' proposed class seems to treat all students that attend multitrack, year-round schools the same. But, as noted above, school districts have implemented a number of different multitrack, year-round calendars depending on the specific circumstances at their particular schools. A school district's decision as to which calendar is appropriate depends upon, among other things, the district's facility needs and its instructional objectives. This year (2000-01), for example, of the 1,492 schools that use year-round programs, 477 schools (with a total enrollment of 315,292 students) are using a single track

calendar, while 1,015 schools (with a total enrollment of 1,016,567 students) are using a multitrack calendar. There are 640 schools that follow a 60/20 calendar; 239 schools that follow a Concept 6 (198) or Modified Concept 6 (41) calendar; 146 schools that follow a 45/15 calendar; 103 schools that follow a 90/30 calendar; and 22 schools that follow a 60/15 calendar. In addition, there are 342 year-round schools that use a customized calendar that does not fit within any of the above categories. The students at each of these schools have different educational experiences depending on the specific calendar that their school uses.

10. With the exception of Concept 6 and Modified Concept 6, all traditional and year-round school calendars are capable of providing students with 180 days of instruction. The only school districts that utilize a Concept 6 or Modified Concept 6 calendar are Los Angeles Unified School District, Lodi Unified School District, Vista Unified School District, and Palmdale School District. Concept B and Modified 6 calendars are required by law to provide the same "number of annual instructional minutes . . .[as] schools of the same grade level utilizing the traditional school calendar." See Cal. Ed. C. § 37670(a).

11. In the absence of multitracking, some other means would need to be found to house the hundreds of thousands of students throughout the state that currently attend multitrack

schools. This would mean that additional facilities would need to be built at a potentially enormous cost. The statewide construction cost savings of housing excess students in multitrack, year-round schools is estimated to exceed $4 billion. According to a report entitled "Avoided California School Construction Costs, Year-Round Incentive Grant and Priority Funding," prepared by Leroy R. Small, Ed.D, for the California Association for Year-Round Education and the National Association for Year-Round Education, the total avoided costs to California taxpayers because of school districts participating in the State's Year-Round Education Incentive Grant Program from 1989 through August 1997 and those districts handling 101,302 pupils in excess of the traditional school capacity amounted to $3,956,717,179. This number can be broken down as follows: (1) school construction cost savings of $1,109,113,685; (2) land/acreage cost savings of $1,120,875,000; (3) residential relocation cost savings of $1,527,150,000; and (4) furniture, equipment and technology cost savings of $199,578,494. A true and correct copy of this study is attached hereto as Exhibit A.

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

Executed this 25 day of July, at Sacramento, California.

Thomas Payne

Exhibit A

AVOIDED CALIFORNIA SCHOOL CONSTRUCTION COSTS YEAR-ROUND INCENTIVE GRANT AND PRIORITY FUNDING 1989-1997

Report for

CALIFORNIA ASSOCIATION FOR YEAR-ROUND EDUCATION

NATIONAL ASSOCIATION FOR YEAR-ROUND EDUCATION

by

Leroy R. Small, Ed.D

Retired Superintendent, CDE Consultant and Current NAYRE Consultant

ABSTRACT

Year-round incentive grant programs originated from passage of AB 87 in 1989 and became California Education Code Sections (ECS) 42260-68 and Section 17017.7. Frequently those knowledgeable about multitrack year-round education (MTYRE) ask, "What cost avoidance benefits have school districts and the State derived from the passage of this law?"

The following analysis is an effort to shed light on the above question. The analysis is divided into two sections. The first section will describe the avoided housing and classroom costs (related to ECS 42260-68) that would ordinarily be required for those students beyond the usual capacity of the school. The criteria applied are those reported as of August 1997 by the California Department of Education (CDE), School Facilities Planning Division (SFPD), which administers the State's MTYRE operational grant program. The avoided cost variables to be considered are school construction, land purchase, relocation, and furniture/equipment.

The second section will describe the costs avoided from the loss of construction eligibility when securing priority 1 or 2 funding as per ECS 17017.6 and 17017.7. The avoided cost variables to be considered are land purchase and school construction including furniture and equipment.

The findings to the primary question indicate that AB 87 has provided a positive financial alternative for both local school districts and the State. MTYRE operational grants reduced the need for new schools; thus they provided for the avoidance of state school construction bonding authority equaling in excess of $3.9 billion. This figure represents avoidance of construction for 101,302 pupils, a number which equals the combined enrollments of Long Beach and Riverside Unified School Districts. From 1990 through 1997, pupil instructional opportunities in those districts which accepted operational grants have been supplemented by more than $480 million through participation in the State's operational grant program. An analysis of the effects of ECS 17017.7 demonstrated that when school districts secured priority 1 or priority 2 status for school site acquisition and construction, additional reduction to construction square footage eligibility was required in order to meet all criteria for priority funding. From 1992-1997 the reduction of construction eligibility under this code section amounted to 4,567,720 square feet. The cost avoidance to the State bond program as the result of priority funding amounts to $1.4 billion. The reduced construction eligibility of $3.9 billion (Section 1) and construction avoidance from priority 1 or priority 2 status of $1.4 billion (Section 2) result in a $5.3 billion construction cost avoidance.

SECTION I
INCENTIVE FUNDING

The MTYRE operational grant program annually awards grants ranging from $575.50 to $1,035.90 per pupil claimed in excess of 5% to the capacity of the school were it to operate on a traditional calendar. These grants can be continued for 20 years as long as the individual school has pupils in excess of its traditional capacity. Schools that participate in the operational grant program ordinarily manage to maintain an excess pupil capacity of 15-20 % or more that equates to an average of 120-150 pupils in excess of usual building capacity. The annual individual school operational grant would average between $103,590 - $146,753 times the number of schools.

It should also be noted that if the typical unified school district decides to operate one or more MTYRE schools at the 120 + % capacity, the district would be eligible for CDE YRE incentive operational grant funding. Before accepting the operational grant, the school district needs to consider the effect of the loss of construction eligibility.

EXCESS PUPILS CLAIMED

The actual number of pupils claimed by California school districts in excess of the rated capacity of the school in the period from August 1989- August 1997 is 101,302. This figure annually increases approximately 4% according to California Department of Education (CDE) records. To arrive at a reasonable, conservative estimate of the avoided housing and construction costs, the excess pupils are divided among all thirteen grade levels (Figure 1). Since Los Angeles Unified and Lynwood Unified have had several high schools participating in the operational grant program, the high school figures reflect actual totals of those schools, with 22,600 pupils claimed in excess of the schools traditional capacity..

Figure 1

101,302 excess pupils - 22,600 H.S. pupils = 78,702 pupils for 9 grade levels, K-8.
78,702 pupils divided by 9 grade levels = 8,744.6 pupils per grade level.

Elementary, Middle and High School totals are:

Elementary (K-5)	8,744.6 x 6 grades =	52,468
Middle (6-8)	8,744.6 x 3 grades =	26,234
High School (9-12)		22,600
		101,302 pupils

AVOIDED SCHOOL CONSTRUCTION COSTS

The square foot allocations avoided per pupil established by State Allocation Board (SAB) policy are the minimums for each grade level. These are 62 square feet for elementary schools, 83 square feet for middle schools and 92-116 square feet for high schools. The average current cost of construction per square foot for all grade levels utilized by the California Office of Public School Construction is $145.35. This figure is exclusive of land, furniture, equipment, and technology (F/E/T) costs.

Figure 2

EXCESS PUPILS		x SQ. FT.	x COST	= AVOIDED CONST. COST
Elementary	52,468	62	$145.35**	$421,342,034
Middle	26,234	83	$145.35**	$280,021,296
High	22,600	104*	$145.35**	$407,750,355
				$1,109,113,685

*This figure represents a median figure in the 92-116 range (see paragraph above)
**When F/T/E is included the total cost per square foot is $171.00. This report has a separate heading for F/T/E (see page 4).

AVOIDED LAND COSTS

Avoided land costs are estimated by using the following formula:

The # of excess pupils per type of school divided by the average capacity of each type of school = avoided # of schools.

Avoided # of schools x average # of acres per type of school x the statewide average cost per acre = avoided land costs.

Note: the average capacity and acreage figures are recommended by the CDE SFPD.

Figure 3

EXCESS PUPILS		/ AVERAGE CAPACITY	=AVOIDED SCH.	x ACRES	= TOTAL
Elementary	52,468	600	87	10	870
Middle	26,234	1200	22	20	440
High	22,600	1800	13	40	520
					1830 acres

To arrive at a reasonable statewide average cost per acre, an estimate can be based upon current costs of approximately $1,000,000 in Southern California and $250,000 in Northern California. Since very few rural school districts participate in the YRE incentive grant program, an average can be utilized for these calculations which is a mid-point between Southern and Northern California costs or $625,000. Thus the estimated total avoided land costs is figured as follows:

1830 acres x $625,000 = $1,143,750,000 avoided land costs

Another way to estimate acreage cost would be to divide the 1830 acres into five equal groups and the range of acreage values into five descending valuations using a 20% difference between each group. This would develop a reasonable basis of comparison for per acreage costs.

1830 acres divided into 5 groups = 366 acres per group

COST PER ACRE	# OF ACRES	TOTAL COST PER GROUP
$1,000,000	366	$366,000,000
$ 800,000	366	$292,800,000
$ 600,000	366	$219,600,000
$ 400,000	366	$146,400,000
$ 200,000	366	$ 73,200,000
		$1,098,000,000

After comparing the results of the two above land cost calculations, a mid-point between the two avoided land cost computations is $1,120,875,000. This figure will be used when computing the total costs avoided adding together all the avoided variables.

AVOIDED RELOCATION COSTS

In the dense urban areas of Los Angeles, San Diego, Long Beach and San Francisco constructing a needed neighborhood school sometimes requires the purchase/development of replacement housing for those families needing relocation because of the proposed school. More than 15% of the state's 5 million pupils live in the above four high-density residential areas. Fifteen percent of the actual 101,302 excess pupils claimed by California districts equals 15,195 pupils. The California Office of Public School Construction (OPSC) confirms a K-12 pupil yield factor per residence of between 0.7 and 1.2. Therefore using 1.0 pupil per residence as an average yield factor, 15,195 residences could be subject to relocation. A 33% adjustment to this figure for multi-family residences would lower the relocation figure from 15,195 to 10,181. Using an estimated figure of $150,000 per relocation, the total estimated avoided relocation figure is (10,181 x $150,000) $1,527,150,000.

AVOIDED FURNITURE AND EQUIPMENT COSTS

Figure 4

The Office of Public School Construction breaks down the square foot cost of school construction, $171.00, as follows:

All costs of construction	85% = $145.35		
Furniture and Equipment	10% =	$ 17.10	
Technology	5% =	$ 8.55	
	$145.35 +	$25.65	= $171.00

The avoided costs for F/E/T can be computed for a total allowance of 15% or $25.65 ($17.10 + $8.55) times the elementary, middle and high school excess pupil count.

EXCESS PUPILS	X	SQ. FT.	X	COST	=	AVOIDED F/E/T
Elementary 52,468		62		$25.65		$ 83,439,860
Middle 26,234		83		$25.65		$ 55,850,874
High School 22,600		104		$25.65		$ 60,287,760
						$199,578,494

SECTION I - SUMMARY

The total avoided costs to California taxpayers because of school districts participating in the State's YRE Incentive Grant Program from 1989 through August of 1997 and those districts handling 101,302 pupils in excess of the traditional school capacity can be summarized as follows:

School construction cost (Figure 2)	$1,109,113,685
Land/acreage (Figure 3)	$1,120,875,000
Residential relocation (Page 4)	$1,527,150,000
Furniture, equipment, technology (Figure 4)	$ 199,578,494
Total cost avoided	$3,956,717,179

Using the same format as shown in Section 1 under avoided land costs (Figure 3), the following avoided land costs can be established.

Figure 8
Avoided Land Costs

	EXCESS PUPILS		AVERAGE CAPACITY	AVOIDED SCHOOLS		ACRES		TOTAL ACRES
Elementary	34,003	/	600	= 56.5	x	10	=	565
Middle	12,700	/	1,200	= 10.5	x	20	=	210
High	13,514	/	1,800	= 7.5	x	40	=	300
								1,075 acres

Using the per acre land cost of $625,000 (Section 1, Figure 3) x 1,075 acres, the total avoided land costs = **$671,875,000.**

SECTION 2 – SUMMARY

The total avoided cost to California taxpayers as the result of school districts seeking priority funding for school construction from the 1992 and 1996 bond issues can be summarized as follows:

120% pupil capacity loading (Figure 5)	**$385,917,877**
Substantial enrollment requirement (figure 6)	**$337,274,041**
Avoided land costs (Figure 8)	**$671,875,000**
Total cost avoided	**$1,394,066,918**

SECTION 2
PRIORITY FUNDING ELIGIBILITY REDUCTIONS

Since 1992 California school districts receiving funding from the State's bond funds for new schools were subject to funding priorities as stated in ECS 17017.6, 17017.7 and 17046.8. The first priority for construction funds is given to school districts with a substantial enrollment in MTYRE schools and whose project school is constructed to operate on a MTYRE basis. The second priority for construction funding contains the same wording as the first priority but the funding level is different. Priority 1 has 50% State funding and priority 2 has 100% State funding. School districts that fund 50% of the cost of school construction have a higher priority on state school bond funds because a 50-50 state/district project provides funding for twice or 50% more schools.

To administer code section 17017.7, the State Allocation Board ruled that a district could take a 6% or 8% reduction in its construction square footage eligibility in lieu of being substantially enrolled in MTYRE. To meet the requirement expressed in the phrase "constructed to operate on a MTYRE basis", all projects are assessed construction square footage at 120% of the actual built capacity of the school. Example: a project built for 600-pupil capacity would be assessed square footage capacity for 720 pupils.

120% Pupil Capacity Loading

The Office of Public School Construction (OPSC) has indicated that 12,923,163 square footage of school construction has been built since 1992. At a minimum, construction avoidance would equal 20% of the square footage of most schools built with State bond funds since 1992. The avoided school construction that has accumulated since 1992 to the present on this basis is 2,584,633 square feet.

The CDE office for SFPD reported that when the avoided school construction figure is adjusted via waivers, the net figure becomes 2,419,478 square feet of avoided school construction.

To estimate what this means in actual avoided costs, the following square footage costs were utilized averaging the K-12 program.

Figure 5

Avoided Construction Costs Derived From 120% Pupil Capacity Loading

	1992 Bond Issue	1996 Bond Issue
Average K-12 construction Per sq. ft.	$150 per sq. ft.	$165 per sq. ft.
Sq. ft. with 120% loading	x 953,060 sq. ft.	x 1,466,418 sq. Ft.
Total avoided construction costs	$142,958,940	$241,958,937

Total avoided construction costs via 120% pupil capacity loading for 1992 & 1996 Bond issues:

953,060 sq. ft.+ 1,466,418 sq. ft. = 2,419,478 sq. ft.

$142,948,940 + $241,958,937 = $385,917,877

Substantial Enrollment Requirement (SER)

A second part of priority funding as per ECS 17017.6 is that each school district had to be substantially enrolled in multi-track year-round education If a district does not meet this criteria, a reduction is assessed equal to 6% times the number of K-6 pupils or 8% times the number of 9-12 pupils. This reduction enables the non-MTYRE district to be equivalent to a substantially enrolled MTYRE district.

Figure 6
Substantial Enrollment Requirement (SER)
Square Footage Reduction Assessment

Square footage reduction reported by CDE/SFPD
1990-1997 2,148,242 square feet
Average construction cost per square foot including furniture/equipment
1992 = $150 1996 = $165
$150 + 165 / 2 = $157
2,148,242 square feet x $157 = $337,274,041

Total SER Cost Avoidance = $337,274,041

AVOIDED LAND COSTS

The total avoided construction square footage reductions resulting from the 20% loading factor and the 6-8% SER requirement equals 4,567,720 square feet (2,419,478 sq.ft., Figure 5 + 2,148,242 sq. ft., Figure 6). Dividing 4,567,720 by the K-12 average square footage allowance establishes the number of pupils that were housed adequately despite avoided school facilities due to priority funding criteria.

Figure 7
Square Footage Converted to Number of Pupils

4,567,720 sq. ft. / 13 grade levels = 351,363 sq. ft. per grade level

Grades

K-5: 351,363 sq. ft. x 6 grades = 2,108,178 sq. ft.
2,108,178 sq. ft. / 62 sq. ft. per K-5 pupil = 34,003 K-5 pupils
34,003 / 600 pupils per school = 56.5 elementary schools (K-5)

6-8: 351,363 sq. ft. x 3 grades = 1,054,089 sq. ft.
1,054,089 sq. ft. / 83 sq. ft. per 6-8 pupil = 12,700 6-8 pupils
12,700 pupils / 1,200 pupils per school = 10.5 middle schools (6-8)

9-12: 351,363 x 4 grades = 1,405,452 sq. ft.
1,405,452 / 104 sq. ft. per 9-12 pupil = 13,514 9-12 pupils
13,514 / 1,800 pupils per school = 7.5 high schools (9-12)